



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### **Usage guidelines**

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

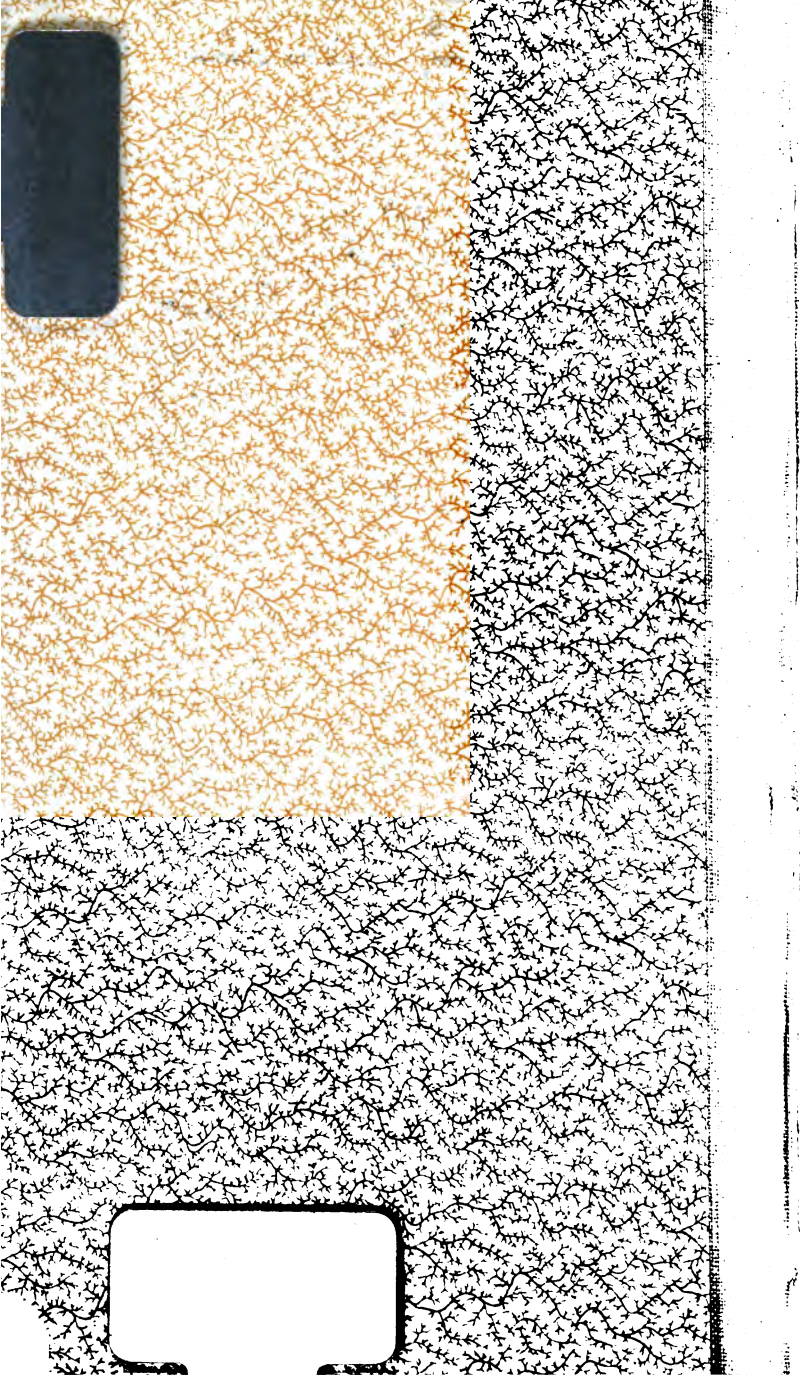
### **About Google Book Search**

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

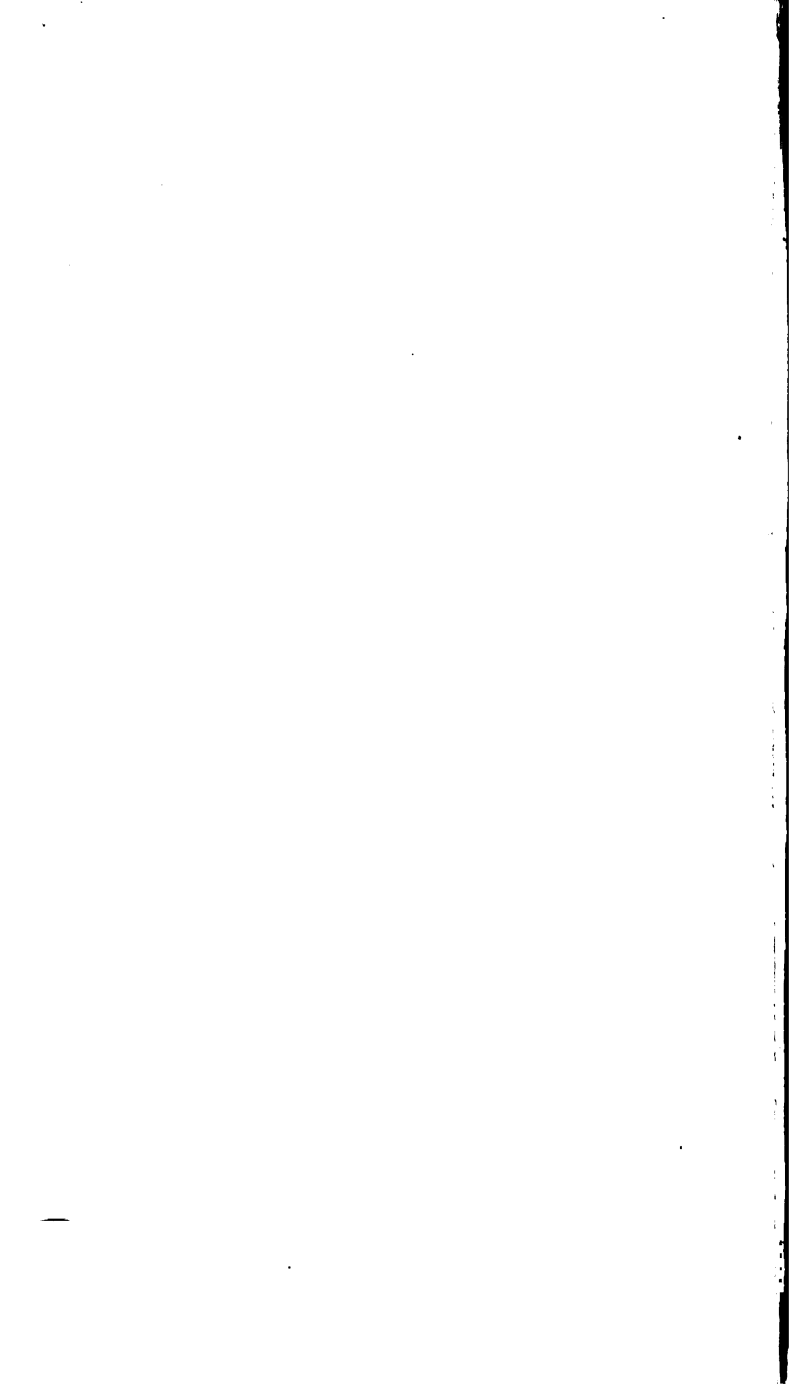
NYPL RESEARCH LIBRARIES



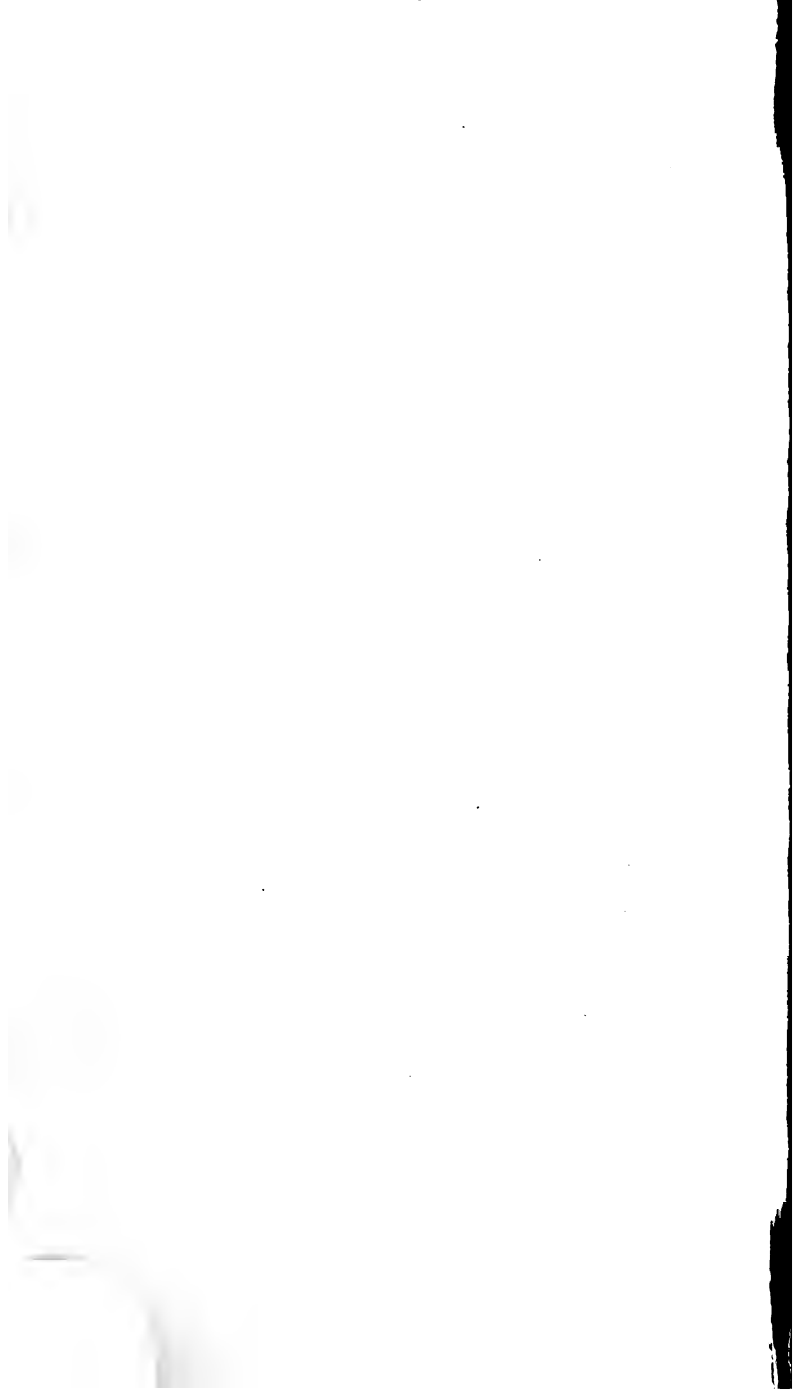
3 3433 07589590 8



Sharp  
—  
CN







NEW YORK  
PUBLIC  
LIBRARY

CM.



YROY W. 1888  
2. 1889  
W. 1890

A N  
A C C O U N T  
O F T H E  
A N C I E N T D I V I S I O N

O F T H E  
E N G L I S H N A T I O N into *Hundreds*  
and *Tithings* :

The happy effects of that excellent institution ;—that it would be equally beneficial to all other Nations and Countries, as well under *monarchical* as *republican* establishments ;—and that, to the *English Nation* in particular, it would afford an effectual means of *reforming the Corruption of Parliaments* by rendering the Representation of the People *perfectly equal*, in exact numerical Proportion, to the total Number of *Householders* throughout the *whole Realm*,

Intended as an Appendix to several Tracts on *National Defects, &c.*

By GRANVILLE SHARP.

---

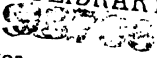
L O N D O N :

Printed by GALABIN and BAKER,  
INGRAM-COURT, FENCHURCH-STREET.

M.DCC.LXXXIV.

1784

1784

THE NEW YORK  
PUBLIC LIBRARY  
  
ASTOR, LENOX AND  
TILDEN FOUNDATIONS.  
1898.

98736

NYOY W 38  
2.1898  
98736

---

**T**HE First Division of this Kingdom into *Hundreds* and *Tithings* was ordained by the virtuous and patriotic King Alfred,\* who is expressly said to have therein followed the prudent Council given by Jethro to Moses,† for

A 2 the

\* See Mr. Lambard's explication of words prefixed to his *Archæologia*, on the word *Centuria*.

† The 1st Establishment of this prudent advice of Jethro I have examined more at large in my Tract on "*the Law of Nature and Principles of Action in Man,*" p. 325 to 329. Wherin I have shewn *the Right of the People* to ELECT Judges and Officers, Civil as well as Military, (Religious Officers and Ministers excepted,) from the *Colonel*, or *Captain*, of a *Thousand*, (who was also a *judiciary*;) down to the *Serjeant* (*Decurio*) or *Tithingman*; (*Deut. i. 9-17.*) all which Officers were *elected* and *nominated* by the people before they were invested with Authority by Moses. This *Right of the People* to ELECT *Judges* and *Officers* is clearly confirmed by a parallel Text in the same Book. Chap. xvi. 18.—

" JUDGES and OFFICERS shalt thou make thee in all thy  
 " Gates, which the Lord thy God groweth thee, throughout  
 " thy

the more commodious Government of  
*the Israelitish Commonwealth*; it being,  
 indeed,

“ *thy Tribes, and they shall judge the People with just  
 “ Judgement.*” When this is rendered literally ac-  
 cording to the Original, the *popular Right of Election*  
 appears still more manifest.—“ *Judges and Officers*  
 “ *shalt thou give to thyself,*” (תתן לך) which could no  
 otherwise be than by a *free Election* in all their Gates,  
 (i. e. the Gates of their Cities, where the public Courts  
 were anciently held,) for the *Judges and Officers* to each  
 Tribe respectively. — Let us be truly thankful to God  
 for the *Justice* of his Laws, and let us pray that we may  
 have Grace to adopt them! As far as the nature of our  
 political Establishments will legally permit, let us, for  
 the honour of *Human Nature*, imitate the *glorious State of*  
*Political Liberty* with which God was pleased to bless  
 his people ISRAEL; and in which he would, most cer-  
 tainly, have maintained them, if they had persevered  
 in *the right Faith*, and in due obedience to *his Laws*!  
 But, when men forsake GOD, they unavoidably lose  
 their LIBERTY! Let no man conceive that the *Rights*  
*of Election*, which I have proved by Scripture, were the  
 Rights only of a *single Nation*, the *People of Israel*;  
 on the contrary, let us remember, that, as *all Nations*  
 under the Christian Dispensation, or rather *all Nations*  
 that are really *Christians*, are said to be engrafted on  
 the *Israelitish Olive-Tree*, and are thereby entitled to  
 the *name* of ISRAEL, so they are undoubtedly entitled  
 likewise to all the immunities and privileges of *redeemed*  
*Israel*: for, the only *people*, perhaps, that are *judicially*  
 excluded from those *national Rights*, are the *Branches*  
 which

indeed, an Institution thoroughly consistent with the most *perfect state of Liberty* that Human Nature is capable of

which were broken off from that good Olive-Tree for their unbelief, i. e. the Jews themselves, who are broken off, indeed, for a time, (a long time, alas, it has now been!) and are dispersed or *strayed* (like *Dead Branches* separated from their proper Root) amongst all the nations of the Earth; thus universally exhibiting, as it were, a *monumental Proof* of the Scripture Testimonies against that peculiar Nation!

But, under the Christian Dispensation, there is not only the *same reason* for claiming to the people the Israelitish privilege of *electing all temporal JUDGES and OFFICERS*; but there are also unquestionable Proofs that the *elective Rights* of Christian People are enlarged still farther to the choice of all their *Spiritual Officers and Ministers*; whereas, even in Israel, all *Spiritual Functions* were *hereditary* and not *elective*.

Thus are the *Elective Rights* of Christian People exceedingly enlarged; and all persons, who withhold or oppose these just *Rights*, ought to beware lest they be found at last amongst the Enemies of the *King of Righteousness*; for it is remarkable that the *great apostacy*, so long foretold in the Christian Church, could not manifest itself in power until the unwearied encroachments and usurpations of *Popes, Emperors, and Kings*, had withdrawn from the Church (i. e. the *Congregation of Clergy and People* in each Country or District) that most essential *Right* of all others, the ancient usage of *electing their own Bishops*! See a long Note on this Subject beginning at p. 331 of my Tract on the Law of Retribution.

enjoying.

enjoying, and yet competent nevertheless to fulfil all the necessary purposes of *mutual Defence, the due Execution of all just and equal Laws, and the sure maintenance of the public peace.* “Wonderful Fruits of Utility would this one Council of Alfred (or rather of Jetbro) produce to the Common-Wealth” (says the loyal Mr. Lambard) “if we would no longer use the shadow, but hold the substantial form of the true Titbing”\* In the Laws of King Edward the Confessor this mode of *national Defence*, by free popular Societies of Armed Citizens in every District and Vicinage, is called “*Summa et maxima Securitas*,” &c.†

“ the

\* “Mirabiles illud unum Aluredi (vel potius Jetsonis) concilium allatarum Republicæ utilitatis fructus, si *vera Decuria* solidam teneremus imaginem, nec amplius umbra uteremur.” Lambard on the word *Decuria*, or *Titbing*.

† Cap. 20. *De Friborgis*.

“Præterea est quædam *summa & maxima Securitas* per quam omnes *status firmissimo sustinentur*, videlicet,

“ ut

“ the Chief and greatest Security by which  
 “ all men are sustained in the firmest State,  
 “ viz. that every one” (unusquisque)

“ ut unusquisque stabiliat se sub fideiussione securitatis  
 “ quam Angli vocant Freoborhges, soli tamen Eboracenses dicunt eandem Ticamannatela, quod sonat  
 “ latine decem hominum numerum. *Hæc securitas hæc*  
 “ *modo fiebat, scilicet, quod de omnibus villis totius regni*  
 “ *sub decennali fideiussione debebant esse antversæ: Ita quod*  
 “ *si unus ex decem forsisset, vocem ad rectum eius*  
 “ *haberent: quod se auferret, daretur lege terminus ei.*  
 “ *xxi. dicam: quæsitus interrim & inventus, ad jus-*  
 “ *titiam regis adducitur. Et de suo illico restaurans*  
 “ *damnum quod fecerat. Et si ad hoc FORISFACERET,*  
 “ *de corpore suo iustitia hæret. Sed si infra prædictum*  
 “ *terminum inveniri non posset, quia in OMNI-FRIBOR-*  
 “ *GO unus erat capitalis quem vocabant, Friborgesboofed,*  
 “ *ipse capitalis sumeret duas de melioribus SUI FRI-*  
 “ *BORGI, et de tribus FRIBORGI sibi propinquioribus*  
 “ *acciperet de unoquoque capitalam & duas de melioribus*  
 “ *vicinisque FRIBORGI si posset habere, & ita se*  
 “ *DUODECIMO EXISTENTE purgaret se & FRIBORGUM*  
 “ *SUUM (si facere posset) de forisfacto & fuga supra-*  
 “ *dicti malefactoris. Quod si facere non posset, ipse*  
 “ *cum FRIBORGO SUO damnum restauraret de proprio*  
 “ *malefactoris quamdiu duraret, quo deficiente de suo*  
 “ *& FRIBORGI SUI persiceret, & erga iustitiam respon-*  
 “ *daret, secundum quod legaliter eis iudicatum fuisset.*  
 “ Tandem vero sacramentum quod non potuerunt adim-  
 “ plere per tres friborges sibi viciniores per se ipsos iurarent,  
 “ sese nullatenus fore culpabiles, & si quando possent  
 “ eam recuperare adducerent ad iustitiam, aut iustitiam  
 “ dicerent ubi esset.”

“ should



“ should establish *himself* under the Se-  
 “ curity of a Covenant” (or Suretyship)  
 “ which the English call *Freoborbgas*,”  
 (i. e. *free pledges*,) “ but the Yorkshire-  
 “ men alone call *Tienmannatela*, which,  
 “ expressed in the Latin Tongue, is *De-*  
 “ *cem* *Hominum* *numerum*,” (the number  
 of 10 Men.) “ This Security was con-  
 “ stituted in the following manner, viz.  
 “ that ALL PERSONS” (UNIVERSI) “ of  
 “ all the Towns of the whole Kingdom  
 “ ought to be under a *Decenal* *Surety-*  
 “ *ship*: so that if one of the Ten should  
 “ FORFEIT” [viz. forfeit his *Free-*  
*pledge*—i. e. his Credit in that little  
 Community as an *honest* and *legal* Mem-  
 ber of it, *probus et legalis*, (see *Magna*  
*Charta*,) by which estimation alone his  
 Neighbours could so far confide in him  
 as to admit him into their *Titbing*,  
 and had a right to expect from him a re-  
 turn of *mutual security*] “ the nine should  
 “ have

“ *have him to*” (trial of) “ **RIGHT,**”  
 (or indict him,) “ *but, if he should abscond,*  
 “ *a term in Law of 31 Days should be*  
 “ *allowed him: being sought in the mean*  
 “ *while and found, he should be brought*  
 “ *to the King's Judgement,*” (i. e. to  
 Judgement or Justice in the King's  
 Courts,) “ *and there, out of his own*”  
 (property,) “ *should make good whatever*  
 “ *damage be had done. And, if to this be*  
 “ *had forfeited*”, (or failed,) “ **Justice**  
 “ *should be done of his body. But if,*  
 “ *within the aforesaid term he could not*  
 “ *be found, the Chief, or Head, for in*  
 “ *every Freeborough*” (or Tithing)  
 “ *there was one Chief whom they called*  
 “ *Freeborough Head*”, (Freoborges Heofod  
 i. e. Head-borough or Tithingman,)  
 “ *should take 2 of the better sort of people*  
 “ *of his Freeborough, and also, out of the*  
 “ *3 nearest Freeboroughs, he should take*  
 “ *of each one Chief and 2 of the better*  
 “ *sort*”

“ *sort of people if he can have them; and*  
 “ *so, the 12 being convened, he shall*  
 “ *clear himself and his Freeborough*  
 “ *(if he can do it) of the forfeiture and*  
 “ *flight of the aforesaid Malefactor.*  
 “ *Which if he could not do, he with his*  
 “ *Freeborough should restore the loss out of*  
 “ *the property of the malefactor as long*  
 “ *as any should remain, failing which he*  
 “ *should complete” (the restitution) “ out*  
 “ *of his own and that of his Free-borough,*  
 “ *and should satisfy Justice according to*  
 “ *what should be to them lawfully ad-*  
 “ *judged,” &c. Thus, all the honest in-*  
 habitants of every vicinage, being answerable in their own private fortunes and property for all the damages and depredations of robbers, house-breakers, and other lawless sons of violence, committed within their own respective districts, would, of course, be stimulated, by the urgent spur of private interest,

to yield up a small portion of their leisure to the necessary *exercise of arms and training*, for their mutual defence against every act of violence and injustice; and on this ancient provision of the Common Law was apparently founded the *legality* of levying taxes on the inhabitants of London and Middlesex, to make good the *damages* occasioned by the alarming riots in the year 1780. We ought, therefore, by no means to repine at the late judgement of the Courts, whereby the Riot-Tax, to make good the damages, was deemed legal, even before the Act was made for levying it; but, on the contrary, to promote, as much as possible, a still more effectual and complete revival of that most excellent institution of the *Common Law*, that it may be constantly and regularly enforced (even in less and more ordinary cases of robbery, house-breaking, &c.) for the immediate recovery of all *damages*

and losses by any *act of violence* whatsoever: the value of the damages should be levied on *ten housekeepers* that are the nearest inhabitants to the spot where the violence or robbery was committed: and if the 10 *nearest housekeepers* should not be able to make good the damage, then 10 *times 10 of the nearest housekeepers*, (or the hundred,) ought to be assessed; (and so on, if necessary, to the whole county, for such was the ancient usage by the Common Law,) for the damage; whereby all housekeepers would be prompted by their own private interest to *associate in arms* with their respective neighbours to suppress every act of unjust violence, and to maintain the public peace.

In the various accounts of these ancient Free-boroughs, or *Tithings*, they are sometimes mentioned, as consisting only of *Ten Men*; at other times, as consisting

ing

ing of "*ten men and their families*"\* : and therefore as all males, from 15 to 60 years of age, are required by law "*to have arms and to be duly exercised therein,*" (which in a former Tract I have already proved,) the number of males in a *Tithing* of the latter description would amount to about *thirty*, (the proper number for a platoon,) if the average rate of 3 males to a family might be supposed a just estimation, including sons, lodgers, apprentices, journeymen, porters, and servants ; though this must vary in different neighbourhoods, according to the nature of the trades and occupations carried on therein, as some employ *many hands*, and others but very few.

\* ——— "*They be commonly named TITHINGS, because they contain (as I told you) the number of TENNE MEN WITH THEIR FAMILIES.*" Lambard's *Duties of Constables*, p. 7. "*This frank-pledge*" (says Lord Coke) "*consisted most commonly of ten households,*" &c. 2 *Inst.* p. 73.

Arch-

Archbishops, Bishops, Earls, Barons, and other great men, having their own proper officers, Serjeants, Esquires, Butlers, Confectioners, Bakers, &c. (see the 21 law of King Edward,) were supposed to have each a *Free-borough* within their own households, and were therefore not included in the ordinary *Tithings*—"because they were a sufficient assurance for themselves and for their menial servants; no less than the ten were, one for another, in the ordinary *Dozeins*."—See Cowell's Interpreter on the word *Friburgh*. This due exemption of the great men, from the obligation of entering into the ordinary *Decenaries*, I wish to be particularly noticed, because it may prevent the opposition of some *big-minded* persons who would think themselves degraded, perhaps, by an *universal* establishment of the *Tithings*. On the quotation, last made from Dr. Cowell,

Cowell, it is necessary to remark, that the word *dozeins* is manifestly used for *decenns*, or *decenna*, and so also very frequently by other law writers, but I cannot find that these *legal Societies*, or *Associations* of neighbours, ever consisted of *dozeins* or *dozens*, in the ordinary sense of that term, though they are so very frequently called *dozeins*, merely, I presume, by corruption of speech; so that the etymology of the English word *dozen* is not from *duodecim*, as one would naturally suppose from the modern application of the word, but from *decenna* and *dizaine*, the Latin and French appellations of the *Tithings*, which were regularly *Decenaries*, consisting of *ten men*; or rather *ten men* and their *families*, as I have before remarked. But, in the revival of *Decenaries*, which I wish to promote, the number of persons in each *Free-borough* or *Decenary*, (whether it shall



shall consist of *ten housekeepers with their families and servants*, or only of *ten men*,) must be determined by the votes of the inhabitants themselves in every neighbourhood, at their several *General Meetings, Folk-motes, or Ward-motes*; because the service must be perfectly voluntary; for, though the arrangement of the people into *decenary* companies was actually "*ordained by the ancient laws of this realm*," and was (and, I trust, still is) required by the *common law* for the whole kingdom, yet one of the most eminent *common-law* writers of his time (Mr. Wm Lambard) mentions the formation of these *decenary* companies as being *the free act of the people themselves* in every neighbourhood: for, according to him, the ancient usage was, that: "*all free borne men shoulde CAST THEMSELVES into several companies by tenne in eche companie,*" &c. (Duties of Constables,

stables, &c. p. 7.) and our ancestors could not have had any more urgent inducement, to render this service voluntary, than what the present generation actually feels, viz. the necessity of self-defence against *rioters, thieves, robbers, and house-breakers*; for, Mr. Lambard informs us, just before, in the same page, that “*it was ordained for the more sure*”

“ **KEEPING OF THE PEACE, and for the**

“ *better repressing of THIEVES and ROB-*

“ *BERS, that all free-born men should*

“ **CAST THEMSELVES into several com-**

“ *panies, &c.*” so that *the REASON of this law, on which the FORCE of it should depend, does not only still subsist, but is certainly as forcible and urgent as ever it was. And, though this excellent custom was become almost obsolete, through neglect and disuse, so long ago as the reign of Queen Elizabeth,* yet, even then, it was still considered as

a *legal* institution, required by the *common law*; and the renewal of it was recommended as easy and most efficacious for the maintenance of the public peace: “whereof” (says the learned Lambard, speaking of the ancient office of Bors-holders, Tithingmen, &c.) “*there is yet some shew or remnant in our LEETS, or Law Days: but if the VERY SUBSTANCE THEREOF WERE thoroughly performed [as I know no let*” (says that learned man, and surely “*no let*” has since been ordained) “*but that by law it may] then should the peace of the land be much better maintained.*” (Duties of Constables, &c. p. 9.) There is no doubt but the effects would be as happy and beneficial as when *the Tithings* were first established by Alfred; for, all the old Historians agree, that an entire stop to *all robbery and violence* was immediately effected by this regulation.

In the Chronicon of John Brompton, we are informed, that “ although laws  
 “ in times of war are silent, yet King  
 “ Alfred, in the midst of the clashing  
 “ of arms, made laws, and instituted the  
 “ *Centuries*, which they call *Hundreds*,  
 “ and the *Decenaries*, which they call  
 “ *Tribings*,” (he should have said  
*Tibings*,) “ maintained peace amongst  
 “ his own subjects, and chastized *rob-*  
 “ *bers* in such sort, that he commanded  
 “ golden bracelets to be hung up in the  
 “ roads, divided into 4 ways, which  
 “ might brave the avidity of passengers,  
 “ whilst there was none who durst  
 “ snatch them away:”\* and Speed also

C 2

tells

\* See Twisden's Hist. Anglicanæ Scriptorum Antiqui. P. 818.

“ Et licet inter arma Leges fileant, ipse tamen *Alfredus*: Rex inter fremitus armorum Leges tulit, et  
 “ *Centurias* quas *Hundredas* dicunt, et *Decurias* quas  
 “ *Tribingas*” (plainly an error for *Tibingas*) “ vocant  
 “ instituit, pacem inter suos custodivit, et *latrones* in  
 “ tantum castigavit, quod in semitis quæ per quadri-  
 “ vium

tells us, from William of Malmſbury, that  
 “ His kingdom hee” (Alfred) “ likewise  
 “ divided into *Sbires, Hundreds, and Ti-*  
 “ *things*, for the better ordering and ad-  
 “ ministring of Justice, and for the  
 “ abandoning of theeves, which had for-  
 “ merly increased *by the meanes*” (the very  
 cause which at present exists) “ of long  
 “ *warres*; whereby, notwithstanding the  
 “ multitude of Souldiers continually im-  
 “ ploied, it is reported that a *Virgin*  
 “ might travaile alone in his daies,  
 “ through all his dominions, with-  
 “ out any violence offered; and that  
 “ bracelets of gold were hanged in the  
 “ high waies, and no man so hardy as  
 “ to take them away.” P. 358.

The *ten* householders or masters of  
 families, from whose precise number of  
*ten* the numerical appellations of *De-*

“ *vium* finduntur, armillas aureas jussit suspendi, quæ  
 “ *viantium* aviditatem arriperent, dum non essent qui  
 “ *ea* arriperent.”

*cenaries,*

*cenaries, Tibbings, and Dozeins, are manifestly derived, were themselves also individually distinguished by the title of Deciners, from the youths, journeymen, lodgers, and servants, that were included, and respectively pledged by the householders in the several Decenaries.*

A right understanding and due application of the term *Deciner* being necessary, as I conceive, towards the promotion of a great national object at present, the necessary reformation of popular Representation in Parliament; I hope my readers will not think it too tedious to attend a little to the investigation of the word, that we may clear it from the indiscriminate use which some law-writers have made of it. “*The Circuit thereof*” (says Dr. Cowel in his Interpreter, speaking of *frank-pledge*) “*was called DECENNA, because it commonly consisted of TEN HOUSEHOLDS:*”

“*and*

“ and every particular person, thus mu-  
 “ tually bound for himself and his  
 “ neighbours, was called DECENNIER,”  
 (more commonly, I believe, *Decener*,  
 and afterwards by ‘corruption *Dozener*,)  
 “ BECAUSE he was of one DECENNA or  
 “ other.”—But this reason is not suffi-  
 “ ciently accurate.—The youths, servants,  
 “ &c. were all “ of one DECENNA or  
 “ other;” yet were they not *Decenners*,  
 though they were also mutually bound  
 by oath for their good behaviour in their  
 respective *Decenaries*; but those men  
 only were properly *Deciners*, who were  
 more immediately responsible for all the  
 rest; by being the *masters* of the several  
 families, viz. only the TEN *householders*  
 in every TITHING, who paid scot and  
 lot, and were answerable for the pay-  
 ment of all *national* as well as *provincial*  
 and *parochial* burthens: these only were  
 the men, who had a *judicial capacity*,  
 and

and were called altogether by the chief *Freeborg*, or *Headborough*, on all occasions to consult and determine; on every question, or extraordinary business, within the extent of their division. All the individuals of the division indeed were suitors in the *Titbing* Court, and might there be present, (as all courts were open,) and amenable thereto for offences; for the *Decenna* or *Titbing* Courts (however insignificant so confined a jurisdiction as a *Titbing* may appear) were of admirable use in promoting *Justice*, and deciding differences and quarrels amongst neighbours. The learned Author of the Notes on Fortescue, (folio edit. in 1741,) p. 106. speaking of "*the Court of the Free-borough or Titbing*," adds, "*wherein*" (says he) "*the Titbing-man*" "*or Headborough* was the JUDGE." And indeed they are intituled, in the laws of the Confessor, JUSTICIARI, JUSTICES; for



for such was their jurisdiction and office within their *Tithing*. It is necessary, however, for the proper understanding of the chapter, wherein this is mentioned, to be previously informed, that the Latin noun, *Friborgus*, of the masculine gender, does not properly signify a *Free-Borough*, *Tithing*, or Association of *ten men*, but rather one individual *Free-Borgess*, of that Society: but, when the Society or Association itself is to be collectively understood, the word is generally, though not always,\* expressed in the neuter gender,—“*Fri-  
borgum*,”—as Dr. Cowel rightly expresses in his Interpreter, on the word, *Friborgh*, alias *Fridburgh*, &c.

\* As there is an example at the latter end of this very law in question, wherein *Friborgos* in all the copies is expressed instead of the accusative plural of the neuter noun, *Friborga*, though the subject manifestly relates to three Friburges, or Societies, and not to three individual *Friburgesses*.

It is also manifest, by the explanation of titles given by the learned Lambard, that nine persons of the Tithing were intituled FREDBORH,\* that is *Free-Sureties*; “*whom we*” (says Mr. Lambard) “*call frank pledges:*” and that “*the tenth man was called TEOTHUNGMON,*” that is, “*DECURIO,*” (or *Tithingman,*) and that “*others called him TIENHEOFOD,*” (head of ten,) and “*others again Freeborbes-keofod,*” (*Freeburges-head,*) “*or Chief-Pledge.*” A comparison of these terms with the terms mentioned in the old laws of St. Edward, N<sup>o</sup> 20 and 32, and the relation these terms bear respectively to each other, will clearly

\* “*Atque hinc novem illi quidem FREDBORH, id est, ingenui sive iussores dicebantur, nos in titulis Curiarum Franci Plegios appellamus Decimus ille TEOTHUNGMON, id est Decuria, dictus est, quo nomine hæc nostra est tempestate occidentalibus Angliæ notissimus. Eam alii TIENHEOFOD, alii FREDBORHES-HEOFOD, id est, vadem primum et præcipuum nuncupabant.*” Lambard on the word *Centuria*.

demonstrate that the "*Justitarios super quosque decem Friborgos*," therein mentioned, were no other than *Tithingmen*, the *Heads* or *Chiefs* of each *Decenary*, who in Latin were called *Decani* or *Deans*—and that the "*Decem-Friborgos*,"\* mentioned in that sentence, do not signify—*ten Tithings* or *Boroughs* in their collective capacity, (which would amount to a *Hundred-Court*;) but only *ten individuals*, the *ten Householders* or *Deceners* of the *Tithing*, each of whom Mr. Lambard calls "*Freoborb*," or *Freeburgess*. This being understood, we may safely proceed to speak of the authority of the *Tithingmen* in their re-

\* 32d Law of St. Edward. De *Centurionibus et capitalibus Friborgis*.

" Cum autem contingeret quod quidam stulti et improbi gratis et nimis consuete erga vicinos suos forisfacerent, cæperunt sapientes ad invicem super hoc habere consilium, et statuerunt JUSTICIARIOS super quosque decem Friborgos, quos Decanos possumus appellare, anglice vero Tienbeofod dicti sunt, i. Decemvir, caput de decem, &c."

spective

pective divisions.—“ *These*”\* (according to the Saxon laws, collected by King Edward the Confessor) “ TRIED CAUSES  
 “ among the villages and neighbours, and  
 “ according to conviction” (or forfeiture on trial) “ took satisfaction,” (or damages,) “ and settled agreements, concern-  
 “ ing pastures, meadows, barvests, as also  
 “ litigations between neighbours, and innu-  
 “ merable such like disputes, which infest  
 “ the weakness of human nature, and con-  
 “ tinually annoy it. But, when causes of

\* A continuation of the 32d Law of 1st Edward; beginning from the end of the last quotation of it.—

“ Isti inter villas & vicinos causas tractabant, & se-  
 “ cundum forisfacturas emendationes capiebant, & con-  
 “ cordationes faciebant, videlicet, de pascuis, pratis,  
 “ messibus, & de litigationibus inter vicinos, & innu-  
 “ merabilibus huiusmodi decertationibus que humanam  
 “ fragilitatem infestant, & eam incessanter oppugnant.  
 “ Cum autem causæ majores erumpent, referebantur  
 “ ad superiores eorum justiciarios quos supradicti sa-  
 “ pientes super eos constituerant, scilicet, super decem  
 “ decanos, quos possumus dicere centuriones, vel cen-  
 “ tenarios, eo quod super centum sriborgos judica-  
 “ bunt.”

“ more consequence occurred, they were re-  
 “ ferred to their superior JUSTICIARIES,  
 “ whom the wise men” (or national coun-  
 cil) “ had appointed over them, that is, over  
 “ ten Deans, “ (or chiefs of tens,)” whom  
 “ we may call—CENTURIONS or CEN-  
 “ TENARII,” (hundreders,) “ because  
 “ they had jurisdiction over AN HUNDRED  
 “ FRIBORGS,” (i. e. an hundred Free-  
 burgesses or Deciners).

Thus, it is manifest, that the  
 Hundreders, or High Constables, were  
 also Justiciaries, so that every Hundred  
 Householders, throughout the kingdom,  
 had a complete establishment of Civil  
 Officers, (i. e. a High Constable and ten  
 Constables, all of whom were Justiciaries  
 within their respective jurisdictions,) to  
 preserve the peace and settle differences  
 amongst themselves and their respec-  
 tive families. And though each, or all  
 of these officers sat as Judges, or Preci-  
 dents,

*dents*, in their respective courts, yet their power was duly limited by the opinion and determination of the *Householders*, or *Deciners*, from whom the *Juries* (the real judges of the causes) were regularly chosen; and still are, to this day, in most cities and trading towns, (as in London,) without regard to any other qualification than that of their being *housekeepers* of the vicinage, indifferent to the parties, of unblameable character, and sufficient substance, not to be suspected of undue bias; or, as it is expressed in an old form,—“*such as be*  
 “ *next neighbours, most sufficient, and*  
 “ *least suspicious.*” And in the act of 21 Edward I. there is an express clause reserving the ancient rights of *Juries* to *cities and burghs*. And, Mr. Hawkins, on mentioning this and another statute, (2 West.) remarks thereupon—“*that,*  
 “ *neither by common law, nor by these sta-*  
 “ *tutes,*

“ *tutes, there was any necessity in proceed-*  
 “ *ings before Justices in Eyre, &c. that*  
 “ *PETIT JURORS should be FREEHOL-*  
 “ *DERS; and, if so,*” (says he,) “ *it seems*  
 “ *probable that there is no greater neces-*  
 “ *sity that GRAND JURORS, making*  
 “ *an enquiry before them, should be FREE-*  
 “ *HOLDERS; and if a GRAND JUROR*  
 “ *before such Justices need NOT be a*  
 “ *FREEHOLDER, why should there be a*  
 “ *greater necessity that a GRAND JUROR*  
 “ *before other Justices should be a FREE-*  
 “ *HOLDER ?*” &c. Pleas of the Crown  
 2d book, chap. 25. p. 217. And he  
 repeats this doctrine in chap. 43. sect.  
 12. “ *That, at the common law, there*  
 “ *was no necessity that JURORS should*  
 “ *have ANY FREEHOLD, as to inquests*  
 “ *before Justices in Eyre, or in cities or*  
 “ *burghs,*” &c. whereby the judicial  
 capacity of the Housekeepers or *De-*  
*ciners*, without any qualification as *Land-*  
*holders,*

*holders*, is, I trust, sufficiently established. We are misled also in the sense of the word *Deciner*, when it is applied (as by the learned Cowell) in a peculiar manner to the chief or head of a *Tithing*.—"It signifies," (says he,) "in the ancient monuments of the law, such as were wont to have the oversight and check of TEN-FRIBOURGS for the maintenance of the King's peace." But the Chief of the ten, as I have already shewn, had his proper titles of *Headborough*, and *Tithingman*; and, though each chief was always a *Deciner*, as being himself one of the ten incorporated *householders*, yet he had no peculiar title of *Deciner*, any otherwise than being the chief of the *Deciners* in his division. The youths, and others, that were not *householders*, were pledged by the *Deciners*, as appears by Briton, cap. 12.—"Volons nous que trestous ceux de xiv ans desouthe nous facent  
" le



“ le serement, &c.—et velons que toutz  
 “ soient en *Dizeyne*, et pleuys par *Des-*  
 “ *cyners*, sauve gentz de religion, elers  
 “ et chevaliers, et leur fitz cynes, et  
 “ femes.”—“ *We will that all those*  
 “ *which are fourteen years old shall make*  
 “ *oath to us, &c. and that all shall be in*  
 “ *TITHINGS, and pledged by Deciners,*”  
 &c. The law could not mean that *all*  
 should be pledged by the respective Head-  
 boroughs alone, but, certainly, by the *TEN*  
*householders* of each *Decenary*. And  
 Dr. Cowell himself also, in the latter part  
 of that article, says,—“ *that DECENNIER*  
 “ *is not now used for the chief man of a*  
 “ *DOZEN, but for him that is sworne to*  
 “ *the King's peace;*” neither in this is  
 he sufficiently accurate; for the being  
*sworn to the King's peace* did not consti-  
 tute a *Decener*, in the proper sense of the  
 word, though it included the person  
 sworn in the jurisdiction of a *Decenary*.

The

The title of *Deciner* could not properly belong to any but the *ten* householders themselves, from whose number his division was formerly called *Tienmantale*, id est, (says Mr. Lambard,) "*Decem-  
virale collegium*,"—a society of ten men. Nine of these, as Mr. Lambard declares, were called *Freoborb*, (*Free Burgefs*,) i. e. *free pledges*, and the tenth was called *Teothungmon*, (*Tithingman*,) i. e. *Decurto*. Now, it seems the office and title of *Decurto* was used in Britain, long before the Saxon Kings, by the Romans, as well in their *civil* as their *military* establishments: and the learned author of the notes on the folio edition of Fortescue's excellent tract, *de Laudibus Legum Angliæ*, observes in p. 31.—"that  
" the ROMANS had their laws, in such  
" parts of this land, as they had their  
" most civil government in; I mean," (says he,) "in colonies hither deduced.

“ For every colony was but an image of  
 “ the mother city, with like holy rites,  
 “ like courts, laws, &c. and for the most  
 “ part with DUUMVIRI instead of  
 “ Consuls, and ÆDILES and DECU-  
 “ RIONES in lieu of a Senate: and it is  
 “ clear” (says he) “ that divers colonies  
 “ from Rome were in Britain, as at Ca-  
 “ melodunum, now Malden in Essex, &c.”

The consideration of this circumstance  
 enables us to propose a much more pro-  
 bable etymology of the English word  
*Denizen* than what is generally assigned.  
 Lord Coke supposes it from “ *deins*  
 “ *nee, born within;*” and also from *Do-*  
*naison*, “ because the freedom is given  
 “ by the King.” But a learned writer  
 (Davies) asserts, that “ *Denizen* is a  
 “ British law term, which the Saxons  
 “ and Angles found here and retained.”  
 It could not, therefore, be derived from  
 the

the *French* tongue, before that modern language was known, or even formed.

Neither is the *Welch* etymology of it at all satisfactory, because it seems very uncouth, and not sufficiently similar in sound to the word. But, if we derive the word immediately from the *Latin*, it will appear most natural and easy, both in *sound* and *sense*; for, the word *Deni*, being derived à *Decem pro Deceni*, is a proper adjective expressive of its relation to the number of *ten* persons in a *Decenary*; and, as the Romans had their *Decuriones*, and consequently *Decenaries* also, a proper *Latin* verb to express the initiation or introduction of a person to the privileges and franchises of a *Decenary*, is very naturally formed from the word *Deni*, viz. *Denizo*, which verb and its derivatives are frequently used by our law-writers, when they speak of the admission of *Aliens* to the franchises

of the native inhabitants; and, the said *franchises* being maintained in ancient times by mutual *frank-pledge* in the several *Decenaries*, it is obvious, that the participle "*Denizatus*," which frequently occurs, and the derived noun-substantive "*Denizatio*," are applied in such cases in their proper *Latin* sense; though the law-writers, who used them, have overlooked that most obvious etymology, which is confirmed by the *sound* as well as the true *Latin* sense of those terms.

Lord Coke says "*Denizen* is taken for an alien born, that is *infranchised*, or DENIZATED by Letters Patent, whereby the King doth grant unto him, that in all things he should be reputed, esteemed, held, and governed, as our liege subject, sprung up" (from his ancestors) within our said kingdom of England, and not otherwise, nor in any other manner."

And he cites Dier, in the same page, 1 Inst. lib. 2. p. 129. respecting this

*ligeance*

*ligeance of Denizens, " Ligentia Domino  
 " Regi debita, &c, Data (est) aut per  
 " denizationem, aut per naturaliza-  
 " tionem."*—When foreigners, therefore,  
 were admitted to the privileges and fran-  
 chises of Englishmen, they became the  
 King's *liege* subjects,—"*esse ad fidem*  
*" Regi Angliæ,"* and were of course *deni-  
 zated*, or admitted to be members of  
 some *Dacenary*, and would be sworn to  
 their *ligeance* in common with other sub-  
 jects in the court of *frank-pledge*; and  
 if the *denizated* stranger rented a house,  
 and payed scot and lot, and other rates,  
 he became a *Frithork*, or *Freeburgess*,  
 having a right to vote for Representatives  
 in the national Council: so that Lord  
 Coke was certainly right in using the  
 terms *infranchised*, and *denizatus*, as  
 synonymous: for the "*renting of a house,*  
*" at a certain rent, by the year,"* is the  
 ancient legal description of *burgage*  
*tenure.*

*tenure.* “It is called BURGH,” (says Sir Edward Coke,) “because it sendeth  
 “BURGESSES to Parliament.” And, though this is not the proper derivation of the word, it is certainly the *usage of borough*, and as well as the *right of all BurgesSES.*

“They that have tenements” (says Littleton) “within the Burrough (or  
 “Burgb) bold of the King their tenements,  
 “and every tenant for his tenement ought  
 “to pay to the King A CERTAIN RENT BY  
 “THE YEAR.” — 1 Inst. lib. 2. c. 10. sect. 162. The next section declares the same doctrine, concerning those who  
 “rent of any other Lord. “And the  
 “same manner is, where another Lord  
 “spiritual or temporal is Lord of such  
 “a BURROUGH, and the TENANTS OF  
 “THE TENEMENTS in such a Borough,  
 “bold of their Lord, TO PAY EACH OF  
 “THEM YEARLY AN ANNUAL  
 RENT.”

RENT." Sect. 163. " *And it is called*  
 " TENURE IN BURGAGE," (says Little-  
 " ton,) " *for that the tenements within*  
 " *the Burrough be* HOLDEN OF THE  
 " LORD OF THE BURROUGH BY CER-  
 " TAINE RENT, &c. *And it is, to*  
 " *wit, that the ancient townes, called*  
 " BURROUGHES, BE THE MOST AN-  
 " CIENT TOWNES THAT BE IN ENG-  
 " LAND; *for the townes, that now be*  
 " CITIES OF COUNTIES, *in old time were*  
 " BOROUGHES, and called BOROUGHES,  
 " *for of such old townes, called Bo-*  
 " ROUGHES, CAME THE BURGESSES  
 " OF THE PARLIAMENT, *when the*  
 " *King hath summoned his Parliament.*"  
 Sect. 164.

Now, this description of paying " an  
 " annual rent," or " holding tenements by  
 " certain rent by the year," is the pro-  
 per distinction of a tenant in Burgage  
 from a tenant at will, because the latter  
 " hath



“ *buth no certain nor sure estate,*” (says Littleton,) “ *for the Lessor may put him out at what time it pleaseth him.*” Lib. I. C. viii. § 68. But very different is the case of *tenants for years*, (as Littleton remarks in the same Chapter,\*) and those persons who agree with the owners of their houses at a *certain rent*, howsoever small, for any *fixed time*, if it be but for *half a year*, or even for a *quarter of a year*, are nevertheless to be esteemed in law as “ *tenants for years*,” (“ *quod tenent ad terminum annorum.*” Lib. I. C. 7. Sect. 67.) For they enjoy a free and *certain* possession to the end of the *agreed term*, so that their *tenure is perfectly free*; and they have sometimes been intituled “ *Liberi Tenentes*,” and *Freeholders*, in contradistinction to *tenants in villanage*, though they are indeed *freeholders* in a

\* “ *Otherwise it is if tenant for years, who must at the end of his terme, doth sowe the land, &c.*” Ibid.

very

very different sense from the common acceptation of the term *freeholder*, now applied only to those who are properly *land owners*; which would therefore be a less equivocal title for them; the others being also *freeholders*, or *free tenants*, though in a less durable *tenure*. But, their ancient indisputable RIGHT, of *sending Burgesses to Parliament*, proves their *freedom*, as members of the community. In the *Borough* of Southwark, and many others to this day, *the renters of tenements, or housekeepers in general*, paying scot and lot, are the *Electors* of the *Deputies* to Parliament; so that the doctrine is unquestionable. And, in the *City* of Westminster, and several other ancient cities, the same RIGHT, by *burgage tenure*, of voting for *Representatives*, prevails to this day; because, *all Cities* were originally deemed *Boroughs*, as being the habitations of *free-borges*, or

*free pledges*, i. e. the associated *householders*, who were mutually *pledged* to maintain the public peace, and defend and support the due execution of the laws: and, if the right of voting were fully restored, throughout the kingdom, to all *householders*, or *masters of families*, who principally support the burthens of the state, even if the franchise should descend no lower, it would be amply sufficient, I trust, to destroy the present deplorable corruption in the representation, or rather the *mis-representation*, of the Commons, and to restore the ancient dignity and freedom of Parliament; especially if all the said *householders* were duly incorporated as *Deciners* or *Free-Borbes*, in their respective neighbourhoods.

For then the number of *Deciners* or *Freeholders* in each county would be regularly known, howsoever much the numbers  
of

of other males in the several *Tithings* might vary; and the advantage of this *regularity of numbers* would not only be the effecting a proportionable *regularity of manners*, but it would also greatly facilitate the much wished-for measure of a *more equal representation of the people*; nay, the representation may be made not only *more equal*, but *most equal* or *perfectly equal*, if all *Deciners* in each county were allowed to vote, as unquestionably, in justice and constitutional right, they ought to do: for, the junction of ten *equal* hundreds of *Deciners* into one associated body would form the court of the *thousand*, well known in the *Israelitish* commonwealth; which, considered as a proportionable *division* of a county, perfectly regular in numerical order, both of *Officers* and other *Deciners*, would much facilitate the conducting and ordering of public business.

And *two* such divisions, of *a thousand Deciners each*, would be a proper number to send *one Deputy* to Parliament, according to the present population of the kingdom, so as not to exceed, but rather diminish, the present number of representatives. Thus, a *most equal representation of all the families in the kingdom* would be obtained; and *two thousand families* (one with another) might well afford to pay ample wages to *one Representative*; and the *Stipend* might be very easily collected, if the *Decenaries* were duly formed and established, and the several courts, which regularly arise from the *Decenaries*, viz. the *Hundred Courts*, and also the Courts of *one Thousand families each*, above proposed; and lastly, the junction of *two such Courts of the Thousand*, for the election of *one Representative* in the great Common Council of the Realm. The people, of whatever parties,

parties, or separate interests, might go up altogether with their separate *Tithings*, or by their *Hundreds*, to the Poll Books, (in like manner as the ancient Romans voted by their *Centuries*,) by which means *order* would be preserved, and no persons would be permitted to vote, but those that were *known to dwell and reside* in the place, or county, where the election is made, according to an ancient rule of the constitution; “*eligantur in quolibet comitatu per homines in eodem comitatu commorantes et residentes:*” See my Tract on *Equitable Representation*, &c. p. 26 and 27; and also an Act of Parliament there quoted, which is still in force, 1 Hen. V. c. 1. It is therefore an act of gross corruption, utterly repugnant to the ancient constitution of the kingdom, to bear *the travelling charges of voters* who dwell in distant places; for such ought not to be permitted

ted to vote at all, except on the spot where they reside, by which not only *much expence* would be saved to the Candidates, but also much immorality, debauchery, and tumult, against the public peace at elections,\* would be prevented.

The

\* Extract, respecting *Bribery at Elections* from "A Representation of the Injustice and dangerous Tendency of *tolerating Slavery* in England." Printed in 1769. P. 16. to 18.

"But how is he" (a Negro claimed by a *Slaveholder* as private property) "to be divested of his *human nature*? or of his just right to the King's protection?"

"A man may, indeed, be said to be divested of his *humanity*, 1st, in a moral sense, by his own action, in stooping to any kind of baseness beneath the dignity of a *man*. And, 2dly, by the execution of the laws, in punishment of some particular kinds of baseness, for which a man may *lawfully* be divested of his humanity by a *civil death*: that is, may be "disabled to hold any office or franchise, &c." "as if such person was naturally dead." This is one of the penalties expressed in a Statute (2 Geo. II. ch. 24.) against bribery and corruption in Parliamentary Elections, whereby, not less the *Briber* than the *Bribed*, (whether the offence be committed "by himself or any person employed by him") is subjected to the divesture abovementioned. But the vilest and most ignorant Negro Slaves  
are

The number of houses in England and Wales, in the year 1777, fell short of a million,

are not so *inhumanly* base and degenerate as these Time-servers, who offend against God! the King! their friends and fellow-subjects! themselves! and all their unhappy posterity, even the children that are unborn! They are enemies to the State, infinitely more to be dreaded, than the most puissant foreign power at open war!

“ No shuffling arts or equivocations whatsoever can lighten this monstrous load of guilt, for which the offenders must *one day* most certainly be called to account, notwithstanding that they may have escaped the penalties of this English Statute: for indeed it is merely the penalties (or execution) of the said Statute which they escape and not the guilt of breaking it; because the same is so warily drawn up, that there is not the least room for mental reservation.

“ A very large proportion of the freeholders in this kingdom, it is to be feared, are involved in this horrid guilt! Nay every elector who hath but even *EATEN* or *DRUNK* at the expence of another, during the time of an election, is likewise in some measure guilty! (though charity will incline us to suppose that their offence is, for the most part, occasioned by ignorance, rather than wilful corruption;) for, not only money, but also any  
 “ Gift, Office, Imployment, or OTHER REWARD  
 “ WHATSOEVER” is forbid by the said Act. Now this prohibition must necessarily include *meat* and *drink*, since these articles cannot be considered below the estimation



million, as the reader may see by a much better authority than mine is, that  
of

mation of a "REWARD," because they are expressly prohibited by a preceding Act still in force, (viz. 7 W. III. ch. 4.) whereby those Candidates, who shall "*directly or indirectly* give, present, or allow, to any person or persons, having voice or vote in such election, any money, MEAT, DRINK, ENTERTAINMENT, or PROVISION, &c. are rendered incapable (though elected) *to act, sit, or have any vote or place in parliament, &c.*" Happy would it be for England, if this salutary law could be strictly enforced! Bribes in money, places, &c. are not productive of half so much evil as the debaucheries of *election entertainments*, because the pernicious effects of the latter are so permanent, that they may fairly be said to be transmitted from *election to election*. The gross immorality, as well as the deplorable idleness and poverty, (all forerunners of slavery) which too much prevail in many parts of this kingdom ought, (I sincerely believe) to be principally attributed to the unlawful practice of *opening houses for public entertainment at elections*: and we cannot hope that this dangerous evil will ever be corrected, unless the wisdom of the legislature shall hereafter think fit to oblige every candidate (as soon as he declares himself such) to promise, upon oath, that he will strictly observe every article of the last mentioned Act, against treating electors. This long digression, from the subject of Negro Slaves, the author hopes may be pardoned, especially if the reader will please to consider, that evil

of the very able and ingenious calculator Dr. Price.\* But, for the sake of a round number, "*Let it, however,*" says Dr. Price, "*be stated at a million.*" (p. 14.)

The number of *Deciners*, or *Householders*, we may, therefore, also state at *one million*: for the character of *Householder*, without farther *distinction*, happily includes all persons of every rank and de-

vil and political Slavery, as well as Slavery to sensual appetites, are so very nearly connected with each other, in their nature and effects, that it is no very considerable transition from the present point to speak of them together. But the case of this poor Negro is very different. If he is a Slave, yet it was not with his own consent that he was made so. He neither *sold himself*, nor has he *betrayed others*, and cannot therefore be liable to such severe penalties. He has not been guilty of any offences, that I know of, for which he might *lawfully* (like corrupt and venal voters who accept of money, meat, or drink, at elections) *be divested of his humanity*; and therefore it must certainly be allowed, that he differs from a horse or a dog in this very *essential point*, viz. *his humanity*."

\* See—Observations on the Population of England and Wales, p. 11. "Total of houses charged, charge-able, and extended: In 1761, 988,692.—In 1777, "952,734."

G

nomination

*nomination* that ought, in *strict justice*, and ancient prescription of constitutional right, to elect and send their own Representatives to Parliament, whether as *Knights, Citizens, or Burgesses*.

The million of *Householders* would form exactly ONE THOUSAND divisions of *one thousand Householders* each, viz. 1000 *Courts of the Thousand*, which I have before recommended from ancient example: and the junction of *two* such *Courts of the Thousand*, for the election of *one* Member of Parliament, as before proposed, would form 500 *Courts of two thousand Householders* each, which would elect *five hundred Representatives* for South Britain; a proportion sufficiently near to the number 513, at present elected for that part of the kingdom; because a reduction in number, would, perhaps, be more beneficial than otherwise; for certain it is, that the an-  
cient

cient Parliaments were not near so numerous as at present, even without reckoning the Deputies from North Britain.

This plan would indeed occasion some variation in modes and forms, but no real *innovation* with respect to the national constitution; because the *right of election* would still be vested where it ought, viz. in *ALL the free Householders, or Free-borges, of ALL the counties*; and that, in the most *perfect proportion of equality* that can be desired; which ought surely to recommend the proposal, if *equal representation* is at all a worthy object,—if *justice and right* are to be preferred to their opposite extremes, *in-equity or iniquity, and tort*, which have too long prevailed;—or lastly, if we have honesty or humanity enough left amongst us, in the fear of God, to *reject the evil and choose the good*, i. e. to ex-

ercise that only faculty, which materially distinguishes men from brutes!

Should we ever be so happy as to see the true divisions of *Tithings* and *Hundreds*, re-established in this realm, and the just reformation of Parliament (as here proposed to be effected by them) actually take place by the establishment of *equal representation*, numerically exact, (which it really may be, if we have but *common honesty* enough amongst us to *desire* and *promote* it,) there will be an admirable harmony in the several gradations and proportions of public officers, or magistrates, over the *Commons of England and Wales*, according to the present supposed state of population; viz.

**Deans or Householdors**, paying scot and loe, and mutually pledging each other and their respective families and servants to the common

peace

peace and common defence	1,000,000
<i>Tithingmen or Captains of Tens,</i> the elected heads of every ten Deciners, being <i>Constables</i> by the common law	100,000
<i>Hundreders,</i> the elected chiefs of every ten Tithings, being <i>Higb-Constables,</i> and <i>Justiciaries,</i> or <i>Justices,</i> by the common law	10,000
<i>Cbiliarobs,</i> or <i>Colonels,</i> the elected <i>Chiefs of Thousands,</i> being not only <i>Civil Magistrates,</i> or <i>Justices,</i> but also the King's military <i>Lieutenants</i> in their districts	1,000
<i>Sanators,</i> or <i>Representatives,</i> in Parliament elected every year once, and more often if "newly," in 500 courts of 2000 Deciners each	500
	But

But the facility of *equalizing*, and there-  
 by *reforming*, the representation of the  
 people in the great national Council, is  
 not the only benefit that might be ob-  
 tained by restoring the ancient mode of  
 government by *Tithings, Hundreds, &c.*

In all these various divisions of the  
 people, regular courts were anciently  
 held for the maintenance of *peace* and  
*right*, and for adjusting all differences  
 amongst neighbours, *without expence*;  
 for, there was no cause or contest of  
 such magnitude and importance, for  
 which a popular court of proportionable  
 dignity could not be found in the larger  
 divisions of *Wappentakes, Tithings, and*  
*Shires*, to adjust and determine it;  
 whereby tedious and vexatious lawsuits,  
 and the ruinous expences attending them,  
 were happily avoided. In like manner,  
 the general *Assemblies, or Congregations,*  
 were held

held in the gates of the Israelites; while under the theocracy, were esteemed courts for justice and judgement; wherein presided Judges and Officers, that were freely elected by the inhabitants of each city or district, as I have elsewhere shewn (see p. 3-5.); and the same reasonable mode of settling private differences, by the Congregation, (or Church,) was not unknown, even among Heathen Nations. The people of Ephesus, it seems, retained this salutary constitution of popular liberty, even when under the yoke of the Roman Beast; and had a power of holding popular assemblies, (called *Ecclesia*, or Church,) for resolving difficult questions and disputes between individuals, besides the ordinary Courts of Justice, under the Roman Deputies, for common offences. This appears by the speech of the Town Clerk  
of



of Ephesus, (recorded in Acts xix. 37-39.) who, after he had appeased the tumult and confusion of the people, that had hastily run together, without notice or summons to specify the cause of assembling; he said—“*Ye have brought hither these men,*” (meaning two of Paul’s companions whom they had seized,) “*which are neither robbers of Churches,*” “*nor yet blasphemers of your Goddess.*” “*Wherefore, if Demetrius, and the craftsmen which are with him, have a matter against any man, THE LAW IS OPEN,*” (or rather—*the court-days are held,*) “*and there are DEPUTIES: let them implead one another. But if ye enquire any thing concerning OTHER MATTERS, it shall be determined in a LAWFUL ASSEMBLY,*” *εἰ τῆ ἐνομῶ ἐκκλησίᾳ*, in a lawful *Ecclesia*, i. e. in a congregation convoked, or called together, in due form and order,

by

by the proper officers; this having been neglected in the then last hasty and tumultuous assembling of the people, which occasioned the Ephesian Town-Clerk's harangue. So perfectly unexceptionable is this mode of determining private quarrels and contests, without expense, by a *popular assembly*, that it seems clearly to be pointed out *for the practice of Christians*, in the commands even of OUR LORD HIMSELF, on the case of a trespassing brother. Mat. xviii. 15-17. "Go  
 " *and tell him his fault*" (said our Lord)  
 " *between thee and him alone: if he shall*  
 " *bear thee, thou hast gained thy brother.*  
 " *But, if he will not bear, take with thee*  
 " *one or two more,*" &c.—" *And, if he shall*  
 " *neglect to bear them,*"—*ἰπερὶ τῆς ἐκκλησίας,*  
 " *tell unto THE CHURCH,*" (not unto the *Prelate of the Church*, as Popish writers contend, therein grossly pervert-

ing\* the divine command by their vain traditions,) but, *τη εκκλησια* “unto the congregation,” including the Laity as well as Clergy. And the Apostle Paul re-  
 proved the Corinthians, for carrying their contests about worldly matters (*βιωτικα*, things pertaining to this life) before the *established imperial Courts of Justice, where unbelievers presided*; which contests ought to have been judged amongst themselves by the *Congregation of Christian Brethren*, (1 Cor. vi. 1-6.)

\* So deluded and unguarded has the Roman Church been in her *apostacy*, that a very learned Jesuit, Cornelius à Lapide, was not ashamed to suppose “*various causes wherein this order*” of redress, commanded in this text; “*might be omitted, or INVERTED*” (he might as well have said at once PERVERTED.) — “*Porro varias ob causas HIC ORDO OMITTI vel INVERTI potest, at subinde debet, ut is, qui peccavit, statim deferatur AD SUPERIOREM,*” &c. which, being no part of the order enjoined by Christ, is a manifest PERVERSION of the command, a glaring attempt to render *the word of God of none effect*, by *vain traditions*, for which he had no better authority than a bare reference to some of his own order, — *one Salmeron, &c.*

But,

But, after the general establishment of Christianity, in this or any other nation, the several popular Courts of the Tithings, or Hundreds, or Thousands, or Counties, duly convened, are the proper Congregations of Christian Brethren for every neighbourhood: and, in ancient times, all those courts, where the sheriffs held their Tourns, (or rotulary visitations,) took cognizance not only of *Quædam*, worldly matters, but also more especially of Ecclesiastical Cases, as being the FIRST,\* or most important objects of their attention: for thus the order of cases, falling under their cognizance, is stated (as Lord Coke informs us, 4 Inst. p. 259 and 260) in “*the Red-Book, inter Leges H. I. cap. 8. de generalibus placitis comitatum, i. e.*” (says

\* “*Agantur itaque PRIMO debita veræ Christianitatis Jura: Secundo Regis placita: POSTREMO causæ singulorum dignis satisfactionibus expleantur.*” 4 Inst. p. 260.

he) "as well of the Tourn" (before-mentioned) "as of the County Courts,"  
*viz.*

"Let the due laws of true Christianity  
 "be FIRST discussed; secondly, the pleas  
 "of the King; lastly, let the causes of  
 "individuals be dispatched with suitable  
 "redress," (or "satisfactions").

The *Bishops*,\* as well as the Earls,  
 Lord-Lieutenants, Sheriffs, *Hundreders*,  
 Aldermen,

\* Sir Edward Coke, by a citation from the Red Book in the custody of the King's Remembrancer, composed in the time of Henry I. proves that the *Bishops* were then required to be present in popular courts of common law. He refers us to the 8th chap. "*de generalibus placitis comitatuum*," which he interprets "as well of the tourn  
 "as of the county courts. Sicut antiqua fuerit institutio  
 "firmatum, salutari Regis imperio, vera nuper est re-  
 "cordantione firmatum, GENERALIA COMITATUUM  
 "PLACITA certis locis, et vicibus et definito tempore per  
 "singulas Angliæ provincias convenire debere, nec  
 "ullis ultra fatigationibus agitari, nisi propria Regis  
 "necessitas, vel commune Regni commodum, sæpius ad-  
 "juciant. INTERSINT autem EPISCOPI, comites, vi-  
 "cedomini, Vicarii, Centenarii, Aldermanni, Præfecti,  
 "Præpositi, Barones, Vavasores, Tungrevii," (Re-  
 "corders of towns,) "et cæteri terrarum Domini dili-  
 "genter

Aldermen, Mayors, Magistrates, &c. presided in these ancient Courts of the Congregation, whereby they were enabled to enforce the said "*due laws of true Christianity,*" against all offenders (whether Clergy or Laity,) through the united power of the Congregation, which regularly assembled at certain fixed places, and at

" genter intendentes ne malorum impunitas aut gravium pravitas," (*the corruption of Magistrates, more particularly of the Judges of the Exchequer, who were Gravissimi,*) " vel iudicium subversio solita miseris laceratione conficiant. *Agantur itaque PRIMO debita vera Christianitatis jura; SECUNDO Regis placita; POSTREMO causæ singulorum dignis satisfactionibus expleantur.*"—"Whereupon they conclude," (says Sir E. Coke,) " THAT ECCLESIASTICAL CAUSES were handled in the *town*, in the reign of Henry I. LONG AFTER the said supposed charter." (a charter to extend the tyrannical papal authority, which was not enrolled till "*the second Richard II. being never heard of before,*" though pretended, by the forgers of it, to have been granted by William the Conqueror,) " And certain it is," (continues Sir E. Coke,) " that the Bishops Con-sistories were erected, and the causes ecclesiastical removed from the *TOWN* to the Consistory, AFTER the making of the said Red Book: Ideo penes lectorem fit iudicium." 4 Inst. c. 53. p. 200.

stated

stated *times* ;\* the united power of *many* being sufficiently effectual to resist and humble the most audacious *individuals*, howsoever great and opulent : whereas, at present, the most bare-faced enormities of *immorality* and *irreligion* are beyond the reach of *ecclesiastical* correction : the *episcopal Authority* (and more especially that which ought to restrain the *Laity*) being reduced almost to nothing, through the fallacious enervating innovations and usurpations of the *antichristian church of Rome*, the grand

\* Viz. in the reign of Henry I. the County Court was assembled *twice*, and the Hundreds and Wapentachs *twelve times*, in a year.—“ Debet enim Shiref-  
 “ gemot *bis*, Hundreda et Wapentachia *duodecies*, in  
 “ anno, CONGREGARI”. 4 Inst. c. 53. p. 260. These  
 Courts, in their different degrees of importance, proportionable to the magnitude of all questions to be discussed, were the proper *Courts of the Congregation*, to decide according to *the due laws of true Christianity* before-mentioned.

enemy

enemy\* to the true limited Episcopacy.

For,

\* The inimical spirit of *Papery* against the true Christian *Episcopacy* began very early to be manifested, for the *Apostacy* could not generally take place (as I have before remarked) until the *Clergy and People* were deprived of their ancient right of *electing their own Bishops*, so that a violent usurpation of that right must of course be found amongst the *first innovations of anticrist*. A remarkable instance of it by **POPE GREGORY THE FIRST**, in the year 591, I find recorded even by a *popish* Abbot, who appeals to *Gregory's own epistles and decretals* for the truth of it; so that the *apostacy* was certainly at that time begun; for, though *Gregory himself* is too commonly esteemed a good primitive *Bishop*, yet his Church had then, for *several years back*, received the brand mark of the *growing apostacy*, by permitting their *Bishops* to revive the *wounded head* of Roman power, by assuming the Pagan Title of *Pontifex Maximus*, which the *Emperors of Rome alone* had exclusively held from the time of *Julius Cæsar*, down at least to *Valentinian the Third*, to whom it may be traced, if not to *Augustulus*, till it became extinct or dead with the power of the last Emperor of the Western branch: so that *Pontifex Maximus* was manifestly the head, "that was, as it were, wounded to death by a sword,"—viz. the sword of *Odoacer*, who then took possession of "the seat of the Dragon," and set up an independent kingdom in *ROME* itself, without the peculiar title of *UNLIMITED ROMAN* dominion; so that afterwards when the *Bishops of Rome*, by assuming that title, did actually revive that blasphemous head, "his deadly wound was healed, and all the world wondered after



For, the *Papish Bishops*, by continually grasping

after the *Beast* ;” and well might they wonder, because the title of *Pontifex Maximus*, is not less foreign to the primitive church of Christ than it had been peculiar to the head of the *Roman idolatrous Augurs*, on account of a ridiculous and strange kind of ceremony in the inauguration of the elected *PONTIFF* ;\* whom they placed in his pontifical robes under a wooden *PONS*, or bridge, built for that purpose over a dry ditch, and bored full of holes, that the blood of the victim (a bull sacrificed to Jupiter on the top of the bridge) might fall through the holes upon the head and robes of the *PONTIFF*, whereby that *Vicar of Satan on earth* was rendered “*terrible to behold*,” that he might be “*saluted*,” (most probably

\* “*La Consecrazione di questo PONTIFICE è tanto ridicola et strana, che ella merita d’essere tutta intersamente dimostrata nel medesimo modo che l’ha scritta Prudentio: il quale dice che questo PONTIFICE nel suo habito Pontificale, con la mitra*” (and it was a *mitre* of the same shape as those worn by the modern *Pontiffs*, except that it was not then marked with the ominous insignia of *three crowns*; and the *spike* at the top, as represented in a coin of *Augustus Cæsar*, was not yet converted into a *cross*.) “*in testa, et la veste alzata entrava in una fossa, supra la quale era un PONTE di legno tutto buccato,*” (so that the name of *Pontifex* is manifestly derived from this wooden *Pons* or *Bridge*, bored full of holes,) “*dove dal vittimario era condotto un toro ornato tutto di fiori et d’oro intorno al capo, che il detto conduttore feriva nel petto, et del Sangue così caldo che n’usciva et trapelava per i buchi del PONTE, era il detto PONTIFICE tutto imbrattato con fregarle ne gl’occhi, gl’orecchi, le labia, et la bocca, et così uscendo suora così sporco et brutto, et molto terribile a riguardare, era da tutto il popolo salutato et ADORATO, &c.*” *Discorso della Religione de gl’antichi Romani. Composto in Franzese dal S. Guglielmo Coust, — et tradotto in Toscano da M. Gabriel Sinesmi Fiorentino in Liene. 1569. P. 236.*

grasping at *undue power*, at length obtained in England a removal of all ecclesiastical

“ probably on the FEET,) “ and ADORED by the people:” whereby the ancient Pagan *Pontifs* were notable types as well of the *bloody* Roman Emperors, who afterwards usurped to themselves the *pontifical* dignity and office, and were likewise ADORED and *deified*, as of the still *more bloody*, though ADORED, *ecclesiastical* Apostates, who, under the *same title*, and authority, of *Pontifex Maximus*, drenched all Europe in *blood*, by ordering *crusades* even against *Christians*, and inciting their votaries to *blood*, by grants of plenary indulgences for sin!

This true etymology of the word *Pontifex* proves that it is *foreign* and inapplicable to any office or dignity in the *Church of Christ*; though Latin writers, since the middle of the sixth century, have industriously substituted it for *Episcopus*, the proper official title of *Christian Bishops*. Near twenty years after the time that the *Roman Emperors* lost this title of *unlimited* and *illegal* power by the *sword* of ODOACER; it was wickedly assumed by Pope *Gelasius*, and afterwards by *Anastasius the second*, and other succeeding Popes, as the learned *Anthony Van Dale* has proved in the second of his nine *Dissertations*, p. 192. Nevertheless, *the wounded head* could not be said to be completely *healed*, (and consequently the commencement of 1260 years of *bestial* power could not take place,) whilst the *regal* power of the *Heruli*, of the *Goths*, or of the *Greek Emperor*, by his *Exarchs*, were possessed of *the throne of the Beast*. But, before the time of Pope *Gregory*, three of the first national *regal* governments, or horns, (without reckoning the government

ecclesiastical causes, and religious questions,  
respecting

vernment of the *Greek* Emperors, which does not so properly fall under that description, because it was cotemporary with the *former* empire,) which sprang up from the ruins of the *Imperial Pontifex Maximus*, had actually possessed themselves of the *imperial* city by conquest, and again had successively lost their dominion, being fundamentally destroyed, and “*plucked up by the roots*,” viz. the kingdom of the Vandals, from Africa under Genseric, that of the Heruli under Odoacer, and that of the Ostrogoths, from Theodoric to Tottilas and Theias. And, as soon as these *three horns* were fallen from their power in the *bloody city*, Pope Pelagius (a name which signifies *DIVISION*, as much as the name of the ancient *Peleg* or *Phalec*, “*for in his days was the earth divided*,”) was emboldened publicly to avow and establish a system of *religious persecution* and *compulsion*, in order to give effectual weight to papal decisions; for he ordained, “*that Heretics and Schismatics might be coerced by the SECULAR ARM, when they could not be drawn to wholesome doctrine by arguments*.”—“*Ut hæretici et schismatici coërceri etiam SECULARI MANU possent: quando ad sanitatem rationibus non deducerentur*.” (Platina *hist. de vitis pontificum*, p. xxxiii. b.) And Pope Gregory was so confident in this *pontifical* system of the *SECULAR ARM*, (as well as all his successors, who have generally been adroit in engaging the neighbouring powers to avenge the *Papal* quarrels, occasionally, one upon another,) that he was not content merely to *rebuke*, but dared even to *affront*, the *Greek* Emperor *Mauricius*, by contumeliously  
taunting

respecting *morality* as well as *doctrine*,  
from the cognizance of our *congrega-*

I 2

*tional*

*taunting* him with his *very low descent, ex infima sorte*  
“*hemianum*,” said Gregory. See Platina hist p. xxxv.

We need not wonder, therefore, at his boldness, in  
usurping an *unlimited* authority over the poor *unarmed*  
Italian BISHOPS, (who were otherwise his equals in  
real dignity of office,) deposing them “*according to*  
“*his will*,” (a manifest token of the Beast,) and openly  
violating the most sacred *rights* of the Italian CLERGY,  
AND PEOPLE, in their *episcopal* elections, that he might  
fill the Italian sees with *Monkish* Prelates, who would  
be more attached to the growing power than *married*  
*Bishops*, such as were, for the most part, those of the primi-  
tive Church. But the particular instance, which I propo-  
sed to mention, was at Rimini, in the year 591, where, on  
the death of a Bishop, Gregory sent a legate to interfere in  
the *election*; and one Odestinus, a nobleman, being never-  
theless *chosen* Bishop, the *Pontif* was pleased (PLACU-  
ISSET PONTIFICI) to command them, on pain of *ponti-*  
*fical* censure, to place *another person* in the see. The man  
*chosen* and *consecrated* for this purpose by Gregory was  
Castorius, who, not being *chosen* by the people of  
Rimini, was of course thwarted by them, and suffered  
many things by PARTY OPPOSITION, the very evil  
which Gregory pretended to avoid by his MOST PAR-  
TIAL *corruption* of the election, “*ne illam, i. e. elec-*  
“*tionem, STUDIA PARTIUM corrumpere*,” for that  
was his plea for interference. Besides this opposition,  
Castorius was grievously afflicted with a distemper in his  
head, on account of which he was invited by the  
*Pontif*

*tional* courts of common law,\* to their own *consistories*, to be holden at such *times*,

*Pontif* to change the air and visit him at Rome; but, being even there no better, he requested the Pontif that a Pastor might be sent to his church, who could better promote the divine service; and, when the Pontif's hope of *Castorius's* recovery by the Roman air abated, he administered the charge of the church of Rimini by *Leontius*, Bishop of *Urbini*, (a second usurpation,) who was also a Bishop of *his own* appointment. In the mean while the sick *Castorius* urged the Pontif with his entreaties; and at length prevailed on him to grant "POWER TO THE CLERGY AND PEOPLE" of Rimini to "elect a Bishop for themselves," (i. e. to be re-constituted in their ancient right,) "which was done in the year 595, as may easily be known (says my author) "from the Epistles of Gregory the Great;" and he refers us to the *decretals*, where the whole affair (says he) is related. See *Italia sacra*, five de *Episcopis Italiae*, &c. Auctore D. Ferdinando Ughello Florentino ABBATE S. S. Vincentii, et Anastasii ad aquas Salvas Ordinis Citerciensis, et Sacrae Indicis Congregationis Consultore. Tom. II. P. 418. Published *permissu superiorum*.

\* — "Ut nullus *Episcopus* vel *Archidiaconus* de *Legibus Episcopalis* AMPLIUS in *Hundredto*," (i. e. in *Turno*) "placita teneant," (which is a plain acknowledgement however, that all pleas, relating to *Episcopal Laws*, were held in the *Hundred Court* before the publication of this pretended charter,) "nec causam  
" quae

*times*, and at such *places*, as they themselves should be pleased to direct; so that *when* and *where* were equally unlimited and uncertain! and the causes were then to be adjudged according to *foreign* Canons and Decretals *unknown to the people!* More effectual means could not be devised for reducing the nation to the most abject slavery under the papal usurpation! To accomplish this baneful purpose, a

“ *quæ ad regimen animarum pertinet ad iudicium secular-*  
 “ *rium hominum adducant, sed quicumque secundum*  
 “ *Episcopales Leges de quacunque causa vel culpa antea*  
 “ *pellatus fuerit, ad locum quem ad hoc Episcopus*  
 “ *elegerit, et nominaverit, veniat, ibique de causa sua*  
 “ *respondeat, et non secundum Hundretum, (“ this not*  
 “ *intended, of the Hundred Court,” Sir E. Coke re-*  
 “ *marks, “ but, that in those times the Sheriff did hold*  
 “ *his Tourn per Hundreda. See Mag. Chart. cap. 35.*  
 “ *and the exposition thereupon,”) “ sed secundum*  
 “ *Canones et Episcopales Leges rectum Deo et Episcopo*  
 “ *suo faciat. Si vero aliquis per superbiam elatus ad*  
 “ *justitiam Episcopalem venire non voluerit, vocetur*  
 “ *semel, et secundo, et tertio; quod, si nec sic ad*  
 “ *emendationem venerit, excommunicetur, &c.” 4 Inst.*  
 c. 53. p. 259.

fictitious

fictitious charter was produced, bearing the title of "*Willielmus gratia Dei Rex Anglorum,*" &c. that it might pass for a deed of King William, commonly called the Conqueror; but, even supposing it to have been authentic, yet, as it was neither published nor known till near 300 years after the death of William, viz. not till the second year of King Richard II. anno 1378, the *invalidity* of such an instrument, to alter "*the due process of the law,*" must be sufficiently obvious: at the last-mentioned period, however, this *pretended* charter of William was ENROLLED, it seems, FOR THE FIRST TIME, viz. in 2d Richard II. "BEING NEVER HEARD OF BEFORE;" as Lord Coke remarks; (4 Inst. c. 83. p. 259.) and the same learned author has produced ample proof from the *Red Book* before quoted, that "ECCLESIASTICAL CAUSES were handled in the Tourn,"  
 (the

(the Sheriff's CIRCUIT, or circular visitation of the HUNDREDS,) "in the reign of Henry I. LONG AFTER the said supposed charter. And certain it is," (says he,) "that the Bishops Consistories were erected, and causes ecclesiastical removed from the Tourn to the Consistory, AFTER the making of the said Red Book: *Idco penes lectorem fit iudicium.*" It cannot, therefore, be denied, that this wicked, nay, I may justly call it, *diabolical*, encroachment of the *papal power* on the most sacred rights of the people was effected (like most other *innovations* of the *apostate church*) by the help of an abominable LIE,—by a FORGERY, so gross, and obviously *fraudulent* and *false*, that the success of it cannot reasonably be attributed to any other causes than (*first*, with respect to the *deceived*) to that kind of *judicial blindness*, which darkens the perceptions of all persons who



who neglect the holy scriptures, and "receive not the love of the truth," after being fairly warned, that, "for this cause God shall send them strong delusion that they should believe A L I E : " (2 Theff. ii. 11.) And (secondly, with respect to the *deceivers*) it may fairly be attributed to the consequent prevalence of "the working of SATAN, with all power, and signs, and LYING wonders, and with ALL DECEIVABLENESS of UNRIGHTEOUSNESS, &c." (2 Theff. ii. 3 to 12.) a prevalence and success which God *permits* in his just judgement against *national delinquency*; for "DECEIVABLENESS OF UNRIGHTEOUSNESS" are terms so clearly descriptive of the above-mentioned abominable *cheat* against the RIGHTS, of our congregational Courts, that "the Father of lies" may well be deemed the *first suggester* of it, as well as an active promoter of its success;

cess; so that his *visible* partners in the *deceit*, and *their church*, (the *power* of which, in this kingdom, was then most essentially promoted by it,) must necessarily be stigmatized by *their share of labour and profit* in so palpable a FRAUD: for as “*no LIE is of the truth*,” (1 John ii. 21.) “*the deceivableness of unrighteousness*” beforementioned, and its *baneful success*, afford, as in many other instances, (some of which I have exposed in my *Declaration of the Peoples Rights*, p. 127 to 135; afford, I say,) an unquestionable *token* of their *apostacy* from the King of *righteousness*,\* and of their consequent fellowship with *the Prince of this World*,†

K

who

\* “*Shall the throne of iniquity have fellowship with thee, which frameth mischief by a law? (Ps. xciv. 20.)*  
 “*for what fellowship hath righteousness with unrighteousness? And what communication hath light with darkness? And what concord hath Christ with Belial?*” 2 Cor. vi. 14. 15.

† — “*Why hath Satan filled thine heart to lie? &c. (Acts v. 3.)* “*for he is a liar and the father of it.*” (John viii. 44.) — “*without*” (i. e. out of the pale of *Christ’s*

who "bath nothing in Christ!" (John xiv. 30.)

By

Christ's Catholic Church,) "are dogs, and fencers, and  
 "whoremongers, and murderers, and idolaters, and, WHO-  
 "SOEVER LOVETH AND MAKETH A LIE. (Rev. xxii.  
 15.) — "SPEAKING LIES IN HYPOCRISY, having  
 "their conscience seared with a hot iron; FORBIDDING  
 "TO MARRY, TO ABSTAIN FROM MEATS, &c." (1 Tim. iv. 1. to 5.) To enforce *these* and such like  
 "doctrines of Demons," (as they are expressly termed in  
 this text,) the above-mentioned abominable FORGERY  
 against the rights of our congregational courts were ma-  
 nifestly devised and intended! Now lest the severity  
 of my expressions should give offence, instead of warning,  
 to those persons for whose service it was intended, I  
 think it necessary to declare, that my censure is not per-  
 sonal against the individuals of the Romish persuasion, but  
 against the profession itself,—against the *iniquity, false-  
 hoods, errors, and usurpations*, of the PAPACY, (in the  
 same manner that I professed myself an enemy to STAND-  
 ING ARMIES, without the least disrespect, or breach  
 of charity, towards the *individuals* incorporated there-  
 in. See the Preface to my Declaration of the People's  
 Rights, p. xxxvi.) I may fairly except, however,  
 such *individuals* as shall be duly convicted of *wilfully*  
 promoting *forgeries* and *falsehood* to prop the *papal* ty-  
 ranny and delusion: but, with respect to all other *in-  
 dividuals* of that church, who are not so directly charge-  
 able with "deceivableness of unrighteousness" in their pro-  
 fession, I am bound not only to regard them with  
 christian

By this miserable forgery, the courts of the *congregation* in England were deprived of the presence and aid of their *Bishops* in public judgement,\* a presence

K 2

and

*christian charity*; but also (after so severe a censure of their profession in general) freely to declare, that there are many, very many, *individuals* among them, whose various good qualities and virtues justly entitle them to my sincere esteem and respect; to such, therefore, I can only add in the words of the Scripture——“ *Come out of her, my people,*” (i. e. all ye that fear God; and the more especially as the period of her power, the completion of the 1260 years of *Roman* tyranny, vested in ten, or rather eleven, crowned Horns, is probably not far distant; all the *prophetical marks* of her apostacy being evident so early as about the middle of the 6th century,) *that ye be not partakers of her sins, and that ye receive not of her plagues. For her sin hath reached unto Heaven, and God hath remembered her INIQUITIES!*” Rev. xviii. 4. 5.

\* This material branch of the Bishop's *duty* as a great *popular* magistrate is clearly proved by Sir Henry Spelman. See “*Reliquiæ Spelmannianæ,*” published by Bishop Gibson, p. 76.—“ It appeareth by Epiphanius,” (says Sir Henry) “ that, in his time, (as also many hundred years after,) Bishops and Clergymen did hear and determine causes, lest Christians, against the rule of the Apostle, should go to law under *Heathens* and *Infidels*. And it is said, in the first Epistle of Clement, (if it were truly his,) that St. Peter him-  
self

and *aid* of the utmost importance to the  
welfare

“ self did so appoint it.” And he previously, in the same chapter, cites a Canon that was ordained A. D. 517, in concilio Taracoenſi, &c. “ That Nullus “ Episcopus vel infra positus,” (or official,) “ die “ Dominico causas judicare præsumat. That no Bishop “ or inferior person presume to judge (or try) causes on “ the Lord’s day.” And, in page 116, where he censures the Bishops of the eleventh and twelfth century, who affected to get into their hands the secular power of *counties, sheriffwicks, and constablerships of castles,* as—“ *Walter, Bishop of Durham,*” (who,) “ having “ bought the county of *Northumberland* of *William* the “ Conqueror, would needs *fit himself in the County “ Court*; but paid dearly for it: for his countrymen “ furiously slew him, even *sitting there*. *Matt. Paris,* “ in ann. 1075,” and “ *Hugh, Bishop of Coventry*” (who) “ exercised the Sheriff’s place, but was ex- “ communicated for it, as *contra dignitatem Episc.* “ and so acknowledged his error.” “ *Dicetus* in ann. “ 1190.” To which he immediately adds—“ But “ every one will say, it was *a common thing in old time “ for BISHOPS to be JUDGES in secular courts*. I confess it,” (says Sir Henry,) “ and think it *godly and “ lawful* as it was used at the first. For the Bishop “ and the Earl sat together in the *County-Court*: the “ *Bishop*, as Chancellor, to deliver *Dei rectum* and *popu- “ lum docere*; the *Earl*, as Secular Judge, to deliver “ *rectum seculi* and *populum coercere*; as is manifest by “ the laws of King *Edgar* and others. But, when the “ Bishops began to supply both places, and to be  
“ meer

welfare of the *people* and of the whole  
*commonwealth,*

“meer Judges of secular courts, then were they *prohibited* by many Canons.” This *prohibition* of the *Canons*, however, had generally a very different object in view from the offensive or pretended motive of their being ordained. I speak of the *later* Canons. The *ancient* Canons confirmed the *rights* of the CLERGY and PEOPLE in *episcopal elections, marriage, &c.* but some of the *later* Canons, on the contrary, favoured the encroachments of tyranny and papal apostacy.\* But, with respect

\* In the *ancient* Canons (commonly called *Apostolical*) it is ordained, that “if any *Bishop, Priest, or Deacon, &c.* should abstain from MARRIAGE, FLESH, and WINE, not on account of” (religious) “DISCIPLINE,” (δὲ νόμου or *exorcitation*—which was only *προς καιρον*—“for a time, that they might give themselves to fasting and prayer,” as allowed by the Apostle, 1 Cor. vii. 5; under an express injunction that married persons should “come together again, lest Satan should tempt them, &c. through their” (natural) “weakness;” it being manifest that such mere *temporary discipline* is alone to be understood in this place,) “but through DEFILEMENT, δια βδελυγίας, (i. e. through pretence that marriage, or meats, DEFILED the body,) “forgetful that all things are exceeding good, and that GOD made MAN, male and female, and” (viz. by this doctrine of defilement) “blaspheming the Creator, either let him be REFORMED,” (ἢ διαρθρωθῶ) “or let him be deposed, &c.” See Canon li. And the fifth *Apostolical* Canon also ordained that “a *Bishop, or Priest, or Deacon, should not put away his wife on pretence of religion, or piety,*”—προφασίσι ευλαβείας. But some of the *later* Canons, on the contrary, invade the most *natural rights* of humanity. The Council of Carthage, held about the time of Pope Celestine, (A. D. 397,) commanded *Bishops, Priests, and Deacons, to hold chastity, and to “abstain (ETIAM AB UXORIBUS) even from their wives.”* See Howel’s Synop. Canonum, p. 117. So the 12th Canon of the council, held in *Trullo* of the Imperial Palace of Justinian

*commonwealth*, whilst the people retained  
any

spect to the present points, viz. the duty of *Bishops* to preside in the *congregational courts* of common law, and the people's ancient *right* of judging *ecclesiastical causes* therein, the learned SELDEN bears still more ample testimony in his "*Titles of Honour.*" P. 520. "And the *Scyregemot* (which was," says he,—"a court kept twice every year, as the *Sheriffs* turn is at this day) was held by THE BISHOP of THE DIOCESS, and the EALDORMAN, (in shires that had *Ealdormen*,) and by the BISHOPS and SHERIFFS, in such as were committed

Justinian the Second at Constantinople, censures the Prelates of Africa and Libys, who "after their ordination did not refuse to live with their own proper wives, thereby" (say the infatuated authors of the Canon) "occasioning offence and scandal to the people, &c."—and therefore this Canon ordains "that the like" (i. e. men living with their own proper married wives, τὰς ἰδίας γυναῖκας) "should not by any means after that time be done!!!" And the learned Theodore Balsamon, Patriarch of Antioch, in the twelfth century, cites several constitutions of the Emperor Justinian the First, which were called τὰ νεῦμα, i. e. *novella*, or *novelties*, (an ominous title)—which ordained that a man "was not to be promoted to episcopal dignity who has a wife or children," τοῦ ἀγορευτοῦ γυναικῆς ἢ τέκνων; (a glaring opposition to the rules laid down in scripture for the choice of a Bishop) and again, "that Bishops are to be deposed who dwell with a woman,"—οὐνομαρτυροῦς γυναικῶν. See the Paris Edition of Balsamon's Commentary on the Canons, p. 373, 421, and 374. Thus the Authors of some of the later Canons are marked with a manifest stain of *apostasy*, as men infatuated and deluded by the *veils of Satan*, who holds them "forth to open shame," by the evidence of their own Canons, as teachers of "the doctrines of Demons," viz. "forbidding to marry," (and commanding) "to abstain from meats," &c. of which devices and doctrines the Apoſtle hath given express warning. (See 1 Tim. iv. 1-6.)

So

any share of their just and ancient right in  
the

“ committed to Sheriffs that were immediately to the  
“ King. And so” (says he) “ *but* THE ECCLIAS-  
“ TICAL and TEMPORAL LAWS WERE TOGETHER  
“ *given in charge to the country.*” The authorities cited  
by Mr. Seldon for this are as follow:—“ *Videbis Leg.*  
“ *Edgar, cap. 5. et not. ad Edmer. pag. 166 & 167.*  
“ *Historiam nostram de decimis, cap. 14. §/1. et leg.*  
“ *Canut. cap. 17. Lambard.*” Sir Edward Coke has  
also cited the laws of Edgar to the same purpose in his  
second Institute, p. 70, vii.—“ *Calibernus est unus Sa-*  
“ *trapis, bis quotannis conventus agitur, cui quidem 12. LIUS*  
“ *DIOECESIS EPISCOPUS, et Senator interfundo, quorum*  
“ *alter 15p. 4. DIVINA, alter humanum populum adque;*  
“ which also agreeth” (says he) “ with *Magna Liberte,*  
“ and other statutes and continual usage. By that  
“ which hath been said, it appeareth” (continues Sir  
Edward Coke) “ that the law, made by King Henry  
“ I. was (after the great heat of the conquest was past)  
“ but a relickion of the ancient law of England: and  
“ forasmuch as the BISHOP *with the Sheriffe did go in*  
“ *circuis twice every year* by EVERY HUNDRED within  
“ the county, &c.”

So that the almost universal prevalence of these open marks of apostacy,  
throughout Christendom, against the express warning of holy Scripture,  
against the strict censure of the ancient apostolic Canon, and even  
against nature itself, is so wonderfully extraordinary, that it would be  
really incredible, were not the evidence of it, which will exist, in-  
torious and undeniable!!! The natural depravity of mankind tends  
not to such effects, so that we can attribute it only to supernatural agents;  
and, though many of the boasted monkish revelations were really mere  
human forgeries, yet I believe that many others were real apparitions  
of seducing spirits, in order to hasten the unnatural apostacy!



the election of Bishops, but little to be regretted, when the Bishops, through the total perversion of *that right*, (by the gradual encroachments of monks, popes, and kings,) ceased to have that *intimate connection* with the *people* and *their interest*, which their predecessors in office were wont to acquire so *naturally* by *popular elections*. But the *later Bishops*, chosen by the *usurpers* of *episcopal elections* for very different purposes, and selected, for the most part, from the *monastic orders*, then falsely called *regular*, (instead of the *regular parochial priesthood*,) did as *naturally* become the dangerous advocates for very different *interests*, the *interests* of their *usurping constituents*, whether *monkish* or *monarchical*; and, more especially, about the time of Richard II. when the notorious forgery above-mentioned was committed.

The

The courts of the *congregation* were also, by this detestable forgery, cheated of the power of *excommunicating* irreligious and prophane persons from their own body or society; a power most essentially their own, but which, lodged where it is at present, merely with the Bishops of a reformed Church, (who want it not for *undue* purposes like the *papal* prelates,) neither promotes *episcopal* dignity nor due *ecclesiastical* authority; because *ecclesiastical* judgements and censures, by flowing in an improper channel, have excited, and ever will excite, the jealousy of the people; and, of course, they have been generally thwarted and opposed in our courts of *common law*, (through a just jealousy, in the courts, of the Bishop's *separate consistories*,) and have sometimes been reversed and annulled with heavy costs and damages against the *ecclesiastical* judge, or, perhaps, (what is worse,)

L against

against his executors and innocent family after his death; by which means, the necessary controul of vice and immorality is weakened, and *ecclesiastical censures*, howsoever just and proper in themselves, are but too little regarded by rich and opulent offenders that can spare money for litigation; so that the public is grievously injured by infectious examples of depravity without any effectual means of restraining them. But, it would be far otherwise, if the *congregational courts* were restored to their ancient powers of acting by the common law, with cognizance of all causes, *ecclesiastical* as well as *civil*, which formerly they enjoyed, as I have already proved. For as *law* "was deemed *the dictate of reason,\**" and "*reason*" justly deemed "*a ray of the divine light,†*" common to all men of

\* "*Lex est dictamen rationis.*" Jenk. Cent. p. 117

† "*Ratio est radius divini luminis.*" Co. Lit. 232. b.

*common sense*, as being derived and inherited from our first *common parents*, so it followed, of course, that, though many *express laws* for particular occasions and likewise various customs and usages, proved by legal precedents, formed a part of our *common law*, (of which the reverend sages of the law and regular students were, undoubtedly, the properest judges, insomuch that the business of the courts could not be carried on without their assistance,) yet by far the greatest and most essential part of the common law consisted in the *exercise of reason*, duly to discern between *good* and *evil*, between *right* and *wrong*, between *justice* and *injustice*, in all cases whatsoever, by the general principles of *natural right*,\* and by those also which may

\* See the 1st, 2d, 5th, and 8th, chapters of *Doctor and Student*.

be drawn from God's Revelation in the Holy Scriptures, which is declared to be the second foundation of our law. †

And, as the members of a christian community are required by the Scriptures to have their "*senses exercised, through* " HABIT ‡" or use, "*to discern both* " *good and evil,*" — such assemblies, with the assistance of the sages and regular students of the law, were surely competent to determine whether any offence complained of, or presented to them, was really either *immoral* in itself, or a *nuisance*, in any respect, to the community; and, in either case, "*the LAW* " "*will find a remedy,* §" be the particular circumstances of the case ever so new or

† See Doctor and Student, chap<sup>s</sup> 3 and 6.

‡ Τῶν δια τῆς ἘΞΙΝ τὰ αισθητήρια γυμνασμένα ἔχοντων πρὸς διάκρισιν καλοῦ τε καὶ κακοῦ. Heb. V. 14.

§ "Lex semper dabit remedium." Prin. Leg. et Æq. p. 52.

uncommon;

uncommon; for *justice*\* ought not to be foiled for the want of an *express* statute, or a *precedent for proceeding*, as at present;† but the *law* is required to be *effective*,

\* “Lex deficere non debet in *justitia* exhibenda.” Jenk. Cent. p. 4. “*Justitia* non est neganda non dif-ferenda.” Jenk. Cent. p. 93 and 129. “—Ne-  
“mini neganda est.” Ib. 176. “Interest reipublicæ  
“ne maleficia remaneant impunita.” Ib. 31, 117,  
and 223. “Law will not suffer wrong.” Grounds  
and Rudiments, p. 188.

† Justice indeed, even at present, does not fail for want of *laws*, but, rather, by having *too many*; for our *Acts of Parliament* have been multiplied of late years to an *excess* that is almost destructive of their end; *excessive*, as well in *number*, as in tedious *prolixity*; for, by neglect of the *common law*; men are apt to conceive that they have *no remedy* for abuses but *statute* making, so that the number of our *Acts of Parliament* is annually increased, though the difficulty of understanding and retaining them in memory regularly increases with the unweildy bulk of the collection, and thereby renders them more favourable to *evasion* and *impunity* than to *justice* and *right*, more *profitable* to the *venal* talents of perverting orators, than *effectual* for the correction of manners. Hence arise the difficulty, the uncertainty, and the intolerable expence, of obtaining justice, whereby *prudent men* are frequently induced rather to  
lose

*effective*\*, and all men, however great, were made to regard it by *amerciaments*, or mulcts, in proportion as well to the *crime* as to the *wealth* or substance of the offender; the *contenement* of the land owner being duly considered, the *merchandise* of the merchant, and the *waynage*

*lose their right* than to risque the expence of defending it in the ordinary course of justice; and *violent men*, on the other hand, are prompted, by the difficulty of obtaining justice, to revenge their *own* quarrels with their *own* hands! Hence *duelling*, *bloodshed*, and *murder*! which are still farther encouraged by the corrupt, modern, practice of the courts, in laying aside the ancient, legal, discrimination between *manslaughter* and *murder*, as I have shewn at large in a distinct tract on that subject, printed several years ago, (in 1773,) and then sent to *all the judges*; but it has not been in the least regarded, though I have never had reason to apprehend any error in the performance, none having yet ever been pointed out, and the modern prevalence of *duelling* proves that the ancient doctrine and discipline of the courts (which alone I have asserted) was certainly right and necessary to be restored.

\* “ Law will rather suffer things against the principles of law than that a man shall be *without a remedy*.” Grounds and Rudiments, p. 188.

of

of the husbandman. (See magna Charta, cap. 14.)

There is no possible case, either of *immorality* or even *inconvenience*, but what is within the reach and correction of the COMMON LAW; for, it is a rule therein, that “*nothing which is against REASON is lawful;†*” and, surely, every thing that is *immoral* is “*against reason;*” and again, by another rule, “*nothing that is inconvenient is lawful.‡*” And ecclesiastical cases were also particularly regarded by it; because, whatever things related to the *advancement of religion* were, *in law*, deemed of the highest consideration;‡ so that, if the congregational

† “*Nihil quod est contra rationem est licitum.*” Co. Lit. 97, b. and Grounds and Rudiments, 228.

‡ “*Nihil quod est inconveniens est licitum.*” Co. Lit. 97, b. and Grounds and Rudiments, 228.

‡ “*Summa ratio est quæ PRO RELIGIONE facit.*” Jenk. Cent. p. 2. et 37. Noy, p. 1. Grounds and Rudiments, p. 318.



*courts* were duly reformed and re-established, the jurisdiction and cognizance of all *ecclesiastical cases* therein, according to ancient usage, would not only promote *morality*, but also, by strengthening *ecclesiastical discipline*, would really enlarge the authority and dignity of EPISCOPACY; and if, to this, the *clergy* and *people* were also re-instated in their ancient *right*, as Christians, freely to elect their own Bishops, [duly observing the *scriptural precautions* against *party divisions* and *tumults*, viz. First, to elect *two* unexceptionable or blameless|| presbyters by the common suffrage of *all the people*\* or congregation, (or, at least,

|| *ἀνεπιληψίτοι*, (1 Tim. 3, 2.) Quorum vitam carpere nemo jure potest; or *ἀνεγκλησίτοι*, (Tit. 1, 7.) Inculpati.

\* See the *mode*, as well as the *popular right*, of episcopal elections more fully stated in my Tract on the Law of Retribution, p. 331 to 339. I have there proved,

least, of all *the episcopal communicants in each diocese* that should demand their

M rights

proved, (I hope,) that the *election of Matthias*, to the dignity of an APOSTLE, was, at the same time, a precedent for *elections* to the office of A BISHOP; and, that “*the unexceptionable apostolic mode of election, described in Acts i. 15-26.*” was disused, indeed, during the time that the *apostles* themselves administered the affairs of the church, after the great day of Pentecost, when the promises, respecting *the gift of the Holy Spirit*, were visibly accomplished, and, during the continuance of the outward and *extraordinary* tokens of that *glorious gift*, whereby the *apostles* manifested “*their authority to APPOINT BISHOPS without the formularly PRECAUTIONS of the first precedent;*” but that these just and equitable PRECAUTIONS became once more desirable as soon as the *extraordinary gifts of the Holy Spirit* (I mean only the *outward* manifestation of apostolic power) ceased in the Church, when the primitive mode of *electing two unexceptionable presbyters by the people*, and referring the appointment of *one of them* to the providence of God, by the decision of *the lot*,” according to the excellent precedent recorded in Holy Scripture, was again revived in several places, as being best suited to the *ordinary* state of the church in all succeeding ages, for which I referred to examples testified by good authority; in addition to which I have lately discovered (amongst the valuable MS. collections of the very learned *Dr. Tho. Mangety*, formerly prebendary of Durham, which, by the Favour of his worthy son,

the

right of suffrage,) and then, after solemn prayer, to *decide BY LOT, before God and the congregation*, the appointment of one

the late *Rev. Mr. John Mangy*, my affectionate relation, are now in my possession) a reference to the council of *Barcelona*, held in the Year of Christ 599, wherein the re-establishment of that most cautious and unexceptionable mode of *popular elections* was expressly decreed by the bishops of a very considerable province\* in Spain, (*Tarragonia*;) and, by them enjoined as a perpetual usage, on the penalty of *deposition*; solemnly denounced against all persons that should *presume to act otherwise, in future*, whether the ordainers of bishops or the ordained. See the 3d chapter of that council; — wherein, after reciting some of the necessary qualifications to render a man eligible to the dignity of a bishop, they add —

“ *ita tamen, ut DUCBUS, aut TRIBUS, quos ante CON-*  
 “ *SENSUS CLERI et PLEBIS ELEGERIT, metropolitani*  
 “ *judicio ejusque co-episcopis presentatio, quem SORS, præ-*  
 “ *cunte episcoporum jejunio, CHRISTO DOMINO TERMI-*  
 “ *NANTE, MONSTRAVERIT, benedictio consecrationis ac-*  
 “ *cumulet. Aliter deinceps, quod absit, præsumptum, et*  
 “ *ORDINATORES et ORDINATOS proprii honoris DEPO-*  
 “ *SITIO subsequatur.”* And this was ordained even where *kingly power* was established, as appears by the title. “ *Consilium Barcinonense, æra DC.XXXVII.*  
 “ *anno XIV. REGIS RECCAREDI, anno Christi DXCIX.*  
 “ *habitum.”* See *Sacrofancta Consilia*, Tom. V. Paris Edition, 1671.

\* “ *Tarraconensis provinciæ episcopi in urbem Barcinonensem, &c.”*

of the *elected* presbyters, according to the authentic precedent described in Acts i. 15 to 26.] the bishops would obtain such a *natural* connection with the *people*, as great *popular* officers, (which they would really be by a *popular* election, truly *ecclesiastical*, in the true sense of the word *ecclesia*, or congregation, the surest foundation for *popular* respect and authority,) in addition to their proper dignity, as being of the highest order of God's ministers in religion, that they would effectually become what the Common Law entitles them, viz. (not merely "*robur ecclesiæ*," *the strength of the church*, but in a more enlarged sense of the word *ecclesia*, including our whole national community, or *commonwealth*, of Christians,) "*ROBUR REIPUBLICÆ*," *the strength of the commonwealth*.\* And,

M 2

though

\* "*Ordo Episcoporum est Robur Reipublicæ*." Jenk. Cent. p. 56. viz. "*The order of Bishops is the*  
"*strength*"

though these ancient congregational courts have unhappily fallen into disuse, yet the law

“*strength*” (force or hability) “of the *commonwealth*.” But, in order to render this maxim obvious and unquestionable, we must necessarily imply and include, in the *episcopal* function, that very important branch of it already mentioned, viz. the presiding as chief *popular* magistrates in the *congregational* courts of common law; and we must also suppose the continuance or re-establishment of the *primitive Christian freedom* in episcopal elections; that the Bishops, by real *popular* elections, may be truly *popular* magistrates, worthy to be entrusted with the civil as well as the ecclesiastical INTERESTS of the *commonwealth*. Mr. Sadler, in his “*Rights of the Kingdom*,” speaking of the time of King Henry II. says,—“It seems considerable, how all historians (of that time and dispute) do record, THE CHOICE OF BISHOPS to be in the PEOPLE: in PLEBE and in POPULO, as well as in CLERO. They mention RADULPH, ordained a Bishop for the Orcades: but rejected by all, because not elected by COMMON ASSENT of the PEOPLE; PLEBS, CLERO, PRINCIPIS, ’tis every where in the old Monks; and how the poor Bishop wandered up and down, as an assistant to other Prelates, &c.” See p. 235, and more instances

\* See also *Leges Edgari Regis*, N<sup>o</sup> 5, and *Leges Cnuti Regis*, N<sup>o</sup> 17, (de Comitibus,) wherein the Bishop is expressly required to attend the *Shyre-gemot*, “and there teach the Goodes Ribi,” “and there teach the Divine Law.” So that the Bishop’s attendance in the *Shyre-parliaments*, (twice every year,) as well as in national Parliaments, is built on the very foundation of the English constitution.

law had duly provided for their continuance by establishing an annual court, called *the View of Frankpledge*, wherein the association and due arrangement of the whole body of the people, in their proper *divinal* divisions, were intended to be completed

instances also at p. 243. The learned author of a Tract, (printed several years ago, as appears by the list of Tracts published at the same time, but without a date,) intituled, "*Lex Parliamentaria, or a Treatise of the Law and Custom of Parliament,*" &c. has cited various proofs of the *People's right to elect Bishops.*—"That for some years," (says he,) "after this new charter granted in this English Parliament" (meaning a Parliament held at London by King Henry I.) "the PEOPLE were generally RESTORED to the right of electing their own magistrates and officers, civil, military, and ECCLESIASTICAL; and this" (says the learned author) "I take to be the grand foundation of the MAGNA CHARTA of ENGLISH LIBERTIES, &c. as it gave relaxation from NORMAN tyranny and slavery. And this may teach us, that the rights and liberties of the COMMONS of ENGLAND are neither so illegally begotten as by rebellion, nor of such tender years as some imagine." &c. p. 42 The continuation of the evidence, which I have collected on this head, would take up too much room to be inserted in a note, and therefore I propose to resume the subject in a distinct Tract at the end of this publication,

and

and renewed, one of the constant articles of enquiry being, whether the *decennaries* were complete. “ Et fiant Visus de  
 “ Franco-plegio, sic quod pax inviola-  
 “ biliter observetur, et quod DECENNÆ  
 “ INTEGRÆ SINT, sicut tempore Hen-  
 “ rici Regis prædicti esse consueverunt.”  
 Fleta, lib. 2. c. 52.

Fleta in this chapter expressly quotes *Magna Charta*, and gives a transcript of the 35th chapter of it, word for word, with very little variation, except what may enable us to *correct* the common printed copies of that noble charter, wherein we frequently find the word “ *tritbinga*” inserted instead of “ *titbin-*  
 “ *ga*,” the proper word, which is manifest from the various reading in Fleta of the same import, though in the plural number, viz. “ *decennæ*,” i. e. *titblings*.  
 The English version, commonly printed  
 in

in the Statute Books, has also, indeed, the word "*trytbing*" instead of *titbing*; and Sir Edward Coke, in his commentary on that chapter, calls the word three or four times "*tritbinga*" though he has copied it right in the chapter itself. (See his 2d Inst. p. 69.) " — *et quod TITINGA teneatur integra sicut esse consuevit, &c.* — and let the TITING be kept entire as it hath been accustomed to be." I have a copy of Magna Charta, printed for the Stationers Company in 1618, which has the same true reading " — *et quod TITHINGA teneatur integra, &c.*" and this reading is still farther proved by Sir Edward Coke's commentary upon it; "*tritbinga*, or *titbinga*," (says he,) "is expounded for *tbeotbinga*, which signifieth the *Frankpledge* of *tenne households*, &c." It is manifest therefore that the  
 maintaining



maintaining *the tithings entire* is expressly ordained by Magna Charta; so that we have *statute law*, (the most respectable *statute* that was ever made,) as well as *common law*, to justify the re-establishment of the *tithings* throughout the kingdom without having the least need to make a new act for that purpose. It is already *the law*, and the sheriffs and other magistrates, who do not enforce it, by holding the annual view of *Frankpledge* for the legal purpose of *maintaining the tithings entire*, as directed by *Magna Charta*, are certainly deficient in their duty, and ought to be duly *amerced* by the crown for their neglect of the most beneficial law, both to the king and people, that was ever made; and, the more especially ought they to be *amerced*, if any *riots* or notorious robberies shall have happened within their respective jurisdictions, during

ring the time of their being in office, because these, in all human probability, would have been prevented, as well as the damages occasioned by them, had the sheriffs done their duty in *completing the tithings*, at an *annual View of Frankpledge*, as the law directs. See the whole chapter concerning the *View of Frankpledge* and other popular Courts, as inserted in the common statute books, 9. Henrici III. cap. 35. " No COUN-  
 " TY COURT from henceforth shall  
 " be holden, but *from month to month*;  
 " and where greater time hath been  
 " used, there shall be greater: nor any  
 " *sheriff* or his *bailiff* shall keep his  
 " *turn* in the HUNDRED, but *twice in the*  
 " *year*: and no where but in due place  
 " and accustomed, that is to say, *once*  
 " *after Easter*, and again after the Feast  
 " of *Saint Michael*. And *the View of*  
 " FRANKPLEDGE shall be likewise

“ at the Feast of Saint *Michael* without  
 “ occasion. So that every man may have  
 “ his liberties, which he had, or used to  
 “ have in the time of King *Henry* our  
 “ grandfather, or which he hath pur-  
 “ chased since. The *View of FRANK-*  
 “ *PLEDGE shall be so done that our*  
 “ *peace may be kept.* And that the  
 “ **TRYTHING**” (for **TITHING**, as  
 I have already proved) “ *may be wholly*  
 “ *kept,*” (or, rather, *be kept entire, or*  
*complete,* which may easily be done, by  
 means of the annual *View of Frankpledge,*)  
 “ as it hath been accustomed. And that  
 “ the sheriff seek no occasions, and  
 “ that he be content with so much as the  
 “ sheriff was wont to have for his *view-*  
 “ *making* in the time of King *Henry*  
 “ our grandfather.” And perhaps the  
 sheriff’s fees for this “ *view-making*”  
 would be the only part of the business  
 of

of *re-establishing* the *titbings* that would need some new regulation.

The account of *Frankpledge*, given in Dr. Cowell's Interpreter, is worthy of being recited at length for the sake of those who cannot have recourse to that work.

“ *Frankpledge* (*Franciplegium*) is  
 “ compounded” (says he) “ of *Franc*,  
 “ (i. e. *liber*,) and *pleige*, (i. e. *sidejussor*,)  
 “ and signifieth, in our common law,  
 “ a pledge, or surety, for freemen.  
 “ For the ancient custome of England,  
 “ for the preservation of the publike  
 “ peace, was that every free-borne man,  
 “ at fourteene yeeres of age, after  
 “ *Bracton*, (religious persons, clerkes,  
 “ knights, and their eldest sonnes ex-  
 “ cepted,) should find *surety* for his  
 “ truth toward the king and his subjects,  
 “ or else be kept *in prison*,\* whereupon

N 2

“ a

\* Mr. Lambard also mentions this custom of *imprisoning* those that could not *find surety*. See his Tract

on

“ a certaine number of neighbors became  
 “ customably bound one for another,  
 “ to

on “ the Duties of Constables,” p. 7 and 8. I will re-  
 cite his words, beginning with the preceding paragraph,  
 for the sake of more fully explaining the nature of  
 pledges as well as their association in *tithing* and *hundred*  
 courts. After mentioning the cause of associating in  
*tithing* or decenary companies, viz. “ — for the better  
 “ repressing of theeves and robbers,” he adds, “ these  
 “ companies be yet in some places of England, (and  
 “ namely with us in Kent,) called BORERS, of the  
 “ saide word BORHES, pledges or SURETIE: albeit in  
 “ the Western partes of the realme they be commonly  
 “ named TYTHINGS, because they containe (as I  
 “ told you) the number of TENNE MEN *with*  
 “ *their families*. And even as *tenne times tenne* doe  
 “ make an HUNDRED, so, because it was then also  
 “ appointed that TENNE OF THESE COMPANIES  
 “ shoulde at certain times” (every three weeks\*)  
 “ meete together for their matters of greater waight,  
 “ therefore that generall assemblie (or court) was  
 “ (and

\* “ *Le Hundred Court poit estre tenuz chescun trois semaines.*” See  
 Crompton’s “ *Authoritie et Jurisdiction des Cours, &c.*” p. 231. In  
 ancient times the Hundred Court was held every fifteen days; — “ *de*  
 “ *Quindena in Quindenam;*” — or once in a fortnight, but was after-  
 wards altered, by a resolution of parliament, (to clear up some doubts  
 concerning the 35th chapter of Magna Charta,) in the reign of  
 Henry III. to the time above-mentioned, viz. “ *de tribus septimanis*  
 “ *in tres septimanas, ubi prius teneri solent de Quindena in Quindenam,*  
 “ *&c.*” See Mr. Prynne’s *Boles Animadversions, &c.* on the fourth  
 part of the Institutes, p. 189 and 190.

“ to see each man of their pledge forth-  
 “ coming at all times, or to answer the  
 “ transgression committed by any bro-  
 “ ken away. So that whosoever offended,  
 “ it was forthwith inquired in what  
 “ pledge he was, and then they of that  
 “ pledge either brought him forth  
 “ within 31 daies to his answer, or satisf-  
 “ fied for his offence. This was called  
 “ *Frank-pledge, causa qua supra*, and  
 “ the circuit thereof was called *decenna*,  
 “ because it commonly consisted of 10  
 “ *households*: and every particular person  
 “ thus mutually bound for himselfe and  
 “ his neighbours was called *decennier*,  
 “ because he was of one *decenna* or ano-  
 “ ther: This custome was so kept, that  
 “ (and yet is) called a HUNDRED. Furthermore  
 “ it was then also ordained that if any man were of so  
 “ evil credit, that he could not get himselfe to be re-  
 “ ceived into one of these *tythings* or *boroes*, that then  
 “ hee should be *shut up in prison* as a man *unworshie to*  
 “ *live at liberty* amongst men abroad.”

“ the

“ the sheriffs, at every county court,  
 “ did, from time to time, take the  
 “ oaths of young ones as they grew to  
 “ the age of 14 years, and see, that he  
 “ were combined in one *dozen* or ano-  
 “ ther: whereupon this branch of the  
 “ sheriffs authority was called VISUS  
 “ FRANCIPLEGII, *View of Frank-*  
 “ *pledge.* See the Statute\* for VIEW  
 “ OF

\* What Dr. Cowel here calls a “ Statute,” is printed,  
 indeed, under that *title* in the common Statute Book;  
 but it has not, in the least respect, *the form of a Statute,*  
 nor does it appear to be, *in reality,* any thing more  
 than what the Honourable Mr. Justice Barrington has  
 conjectured, i. e. “ *This supposed Statute likewise* (says  
 he, referring to what he had before said of the preceding  
*nominal Statute, viz. “ This is most clearly no Statute,*  
 “ but only an entry made in the *common-place* of some  
 “ Lawyer,” &c.) “ *seems to have been taken,*” (says he,)  
 “ as well as the preceding one, from the notes or *common-*  
 “ *place of some lawyer, who had occasion to hold a court*  
 “ *of Frank-pledge,*” &c. It contains, indeed, most of  
 the usual *articles of enquiry* for a court of Frankpledge;  
 but I must remark that the 4th and 5th articles contain a  
 gross perversion of the antient articles of enquiry concern-  
 ing *vagrants, viz. “ Vagrants, of whom there was any pre-*  
 “ *sumption, or suspicion, of evil,*” &c. for this necessary  
 object of enquiry is here perverted and altered to serve  
 the

“ OF FRANPLEDGE, *made anno 18.*  
 “ *Ed. 2. See Decennier, † Leete, § View*  
 “ *of*

the purposes of a most detestable oppression, *Villenage*, to bring *poor labourers* under the usurped authority of the great Lords and land-owners as appendages to their estates and mere private property! Happily therefore it is *no Statute!*\* The proper articles of enquiry may be found in *Fleta*, lib. ii. cap. 52. I must acknowledge, however, that this chapter contains some articles of enquiry favourable to the abominable oppression of *villenage*, but they are distinct articles from that respecting *vagrants*, and as *villenage* is now abolished there can be no occasion to recite them.

† From this head I have already, in the former part of the work, extracted what seemed to be most necessary.

§ “ *LEETE, (Leta,) is otherwise called a LAW-DAY,*  
 “ *SMITH de Republ. Anglor. lib. ii. cap. 18. The*  
 “ *word seemeth to have growne from the Saxon, (LETHE,)*  
 “ *which,*

\* I have a copy, nevertheless, of this false Statute, printed in the year 1529, (the 20. Henry VIII. only a little time before the reformation,) when the whole bulk of all the Statutes at large was contained in a very small pocket-volume, little more than half the size of my hand, so that this important book was hardly big enough, in respect of its size, to be deemed even a *manual*, though it bears in its title-page the extraordinary character of containing “ *more Statutes than ever was imprinted in any one boke before this tyme;*” and yet, even then, it contained, it seems, some *things*, falsely called *Statutes*, that ought not to have been there. I wish the *many weighty folios* were once more reduced to a *single manual!*



“ of Frankpledge, and Freoborthe. That  
 “ this discipline is borrowed by us of the  
 “ *Romane*

“ which, as appears from the laws of King EDWARD,  
 “ set out by M. LAMBERT, num. 34. was a court of ju-  
 “ risdiction above the WAPENTAKE or HUNDRED,\*  
 “ comprehending THREE or FOUR of them, otherwise  
 “ called THRYHING,” [in the said law, as published  
 by Mr. Lambert, it is also called TRIHINGE, †  
 LEDA, and LETH,] “ and contained the third part  
 “ of a province or shire. These jurisdictions, one and  
 “ other, be now ABOLISHED,” (this, however, is not  
 true; they were never abolished though fallen into dis-  
 use; they are so far from being abolished that the use  
 of

\* In the preceding Law of King Edward, N<sup>o</sup> 33, the *Wapentacium* is expressly declared to be the same Court as the *Hundred Court*, — quod Angli vocant *Hundredum*, supradicti comitatus vocant *Wapentacium* :” and that it is so named from the *salute* usually paid to the chief of that court, (i. e. the *High-Constable* or *Hundreder*,) by touching his spear with their *weapons*, or lances, in token of confirmation, (*vacare*, confirmare,) but, more expressly according to the English tongue, we call it (says the Law) WAPEN-TAC; armorum *tactus* est, *Wepno* enim *arme* sonat, *tac* *tactus* est.

† Lex 34. Edwardi Regis — Tit. “ De *Trihingis* et *Lodis*  
 “ Erant etiam et alie potestates super *Wapentacibus*, quos vocabant  
 “ *TRIHINGAS*, quod erat *tertia pars provincia*. Qui vero super eas  
 “ dominabantur, vocabantur *TRIHINGERRAS*, ad hos deferbantur  
 “ *causæ* que non poterant definiri in *Wapentacibus*. Sicque, quod  
 “ Angli vocabant *Hundredum*, isti, *Wapentacium*, et, quod Anglice vo-  
 “ cabant 3 *vel* 4 *Hundreda*, isti vocabant *TRIHINGA*. In qui-  
 “ busdam vero provinciis Anglice vocabantur *LETH* quod isti dicunt  
 “ *TRIHINGE*. Quod sitem in *TRIHINGE* definiri non po-  
 “ terat, ferebatur in *SCYRAM*,” i. e. to the *County Court*,

“ *Romane Emperours*, or rather *Lombards*, appeareth most manifestly in  
 “ the

of them is not only, at this time, *legal*, but really required by *law*, so that no *new law* is necessary for their *revival*, as I have already shewn,) “ *and swallowed up* “ *in the Countie Court*” [but the *County Court* itself is so far fallen, also, into disuse, through a necessary consequence of neglecting the *Hundreds* (or *Wapentaks*) and the *Tribings*, that it seems, as much as the latter, to have lost its ancient importance, which was that of a **COUNTY PARLIAMENT**, competent for all business (bridges, turnpikes, regulations of Commons, goals, workhouses, &c.) within each county respectively, business with which at present the great national council is clogged and pestered, and the sessions prolonged, instead of being dispatched in the proper *County Courts* where the truth of the allegations for changes and new regulations would best be known and ascertained] “ *except they be* “ *held by prescription.* *Kitchen*, fol. 6, or *charter in the* “ *nature of a franchise, as I have said in (HUNDREDS)* “ *The libertie of HUNDREDS is rare, but many Lords,* “ *together with their Courts-Baron, have likewise Leases* “ *adjoined and thereby doe enquire of such transgressions as* “ *are subject to the enquirie and correction of this Courts* “ *whereof you may reade your fill in KITCHEN, from the* “ *beginning of his booke to the fift chapter, and BRITON,* “ *cap. 28. But this Court, in whose manner soever it be* “ *kept, is accounted the KING'S COURT, because the* “ *authoritie thereof is originally belonging to the Crowne,* “ *and thence derived to inferiour persons, KITCHEN, fol. 6,*  
*Justice*

“ the 2d booke of *Feuds*, cap. 53, upon  
 “ which, if you read *Hotoman* with those  
 “ authors that hee there recordeth, you  
 “ will think your labour well bestowed.  
 “ Read more of this, viz. what ARTI-  
 “ CLES were wont to be inquired of in  
 “ this court, in *Horne's Mirrour of Jus-*  
 “ *tices*, lib. 1. cap. de la venue des francs  
 “ *pleges*, and what these articles were in  
 “ antient times, see in *Fleta*, lib. 2.  
 “ cap. 52.”

“ Justice DYER sayth, that this Leete was first derived  
 “ from the sheriffes TURN, fol. 64. And it enquired of all  
 “ offences under high treason, committed against the Crowne  
 “ and dignitie of the King; though it cannot punish many,  
 “ but must certifie them to the Justices of the Assise, PER  
 “ STATUT. ANNO 1. ED. 3. CAP. ULT. KITCHEN, f. 8.  
 “ But what things be onely inquirable, and what punishable,  
 “ see KITCHEN in the charge of a Court-Leete, fo. 8-20.  
 “ See also the Statute, ANNO 8. ED. 2. The jurisdiction  
 “ of bayliffes in the dutchy of Normandie, wwithin the  
 “ compass of their provinces seemeth to be the same, or very  
 “ neare the same, with the power of our Leete, cap. 4.  
 “ of the grand Custumary.”

The title in *Horn's Mirrour* is not, as Dr. Cowell has said, "*De la venue,*" &c. but "*De Viewes de Franckpledge.*" See chap. i. sect. xvii. This chapter contains many things worthy to be known, and which also relate particularly to the subject of this book, and therefore I think myself obliged to recite it for the sake of those who have not a copy of the original. In doing this, however, I propose to follow the common English translation, printed in 1646, making such alterations as a comparison with the French copy, printed in 1642, may seem to require.

" *Of Viewes of Franck-pledge.\** Of  
 " *these first assemblies it was also ordained,*  
 O 2 " *that*

\* This word is plural in the old English translation but not in the French copy. Chap. 1: Sect. xvii. *De Viewes de Franckpledge.*

" *De celles assemblies premiers estoit aussi ordaine que*  
 " *chescun Hundredor fait common assemble un foits per au,*  
 " "

" that every Hundred" - et " doe make a  
 " common meeting once in the yeere," and  
 " not only of the Freeholders," (or Fief-  
 tenants,) " but of all persons within the  
 " Hundred, strangers and denizens of the  
 " age of 12 yeeres and upwards, except  
 " of Arch-Bishops, Bishops, Abbots,  
 " Priors," and all " religious persons,  
 " and all clerkes," (Clergy,) " Earls,  
 " Barons, and Knights, Feme Coverts,"  
 (rather married women,) " deaf" and  
 " dumb, sick, idiots, infected persons,  
 " and those who are not in any Dozien,"  
 (rather — " and those who are elsewhere  
 " included in a Decenary" — for that is  
 the proper exception intended;) " to en-  
 " quire

" et nemy seulement d' fief tenants mes d' tous del hundred  
 " estrangers et Denizens d' xii ans on suis forspise Arche-  
 " vesques, Evesques, Abbes, Priors, et tous gents d' Re-  
 " ligion, et tous Clerkes, Countees, Barons, et Chevalers,  
 " Femmes epouses, Sourdes et Mutes, Malades, Fals-naistres"  
 (Idiots, or Naturals as they are sometimes called) " et  
 " Mejeaux, et Ceux que" (for qui) " Jont ailors en de-  
 " xain,

“ quire of the points aforesaid, and of the  
 “ articles following, and not by villanies,”  
 (meaning *villains* or bondmen,<sup>a</sup>) “ nor  
 “ by women,<sup>b</sup> but by the *afferment*” or  
 verdict

“ *zain*, *pur enquirer des points avant dits, et des ARTI-*  
 “ *CLES suivants, et nemy per SERFS*” [<sup>a</sup>i. e. the la-  
 bouring Poor, enslaved through the oppression, pride,  
 and injustice, of the rich *Landholders*, by whom they  
 were called “ *Serfs*,” i. e. *Servi*, *Slaves*; but God  
 will avenge (עַל יַד אֱלֹהִים) “ the cause of the oppressed  
 “ and the right of the poor.” (Psa. cxl. 12.) He  
 “ will save the oppressed poor, BUT WILL BRING  
 “ DOWN HIGH LOOKS.” (Psa. xviii. 27.) And “ he  
 “ that oppresseth” (ὁ ἀδικῶν κομισεται ὁ ἠδικησας καὶ οὐκ  
 εἰσι προσωπολαψια) “ shall receive” i. e. retribution  
 “ for the oppression which he hath done, and there is”  
 (with God) “ NO RESPECT OF PERSONS.” Col. iii.  
 25.] “ *ne per FEMES*” [<sup>b</sup>i. e. the “ *averement*,” ver-  
 dict, or judgement, was not to be found by *women*,  
 though they might undoubtedly be *witnesses*, and give  
 information to the Court to assist the “ *averement* :”  
 and, by the exprefs exemption (but not exclusion) of  
 married women, “ *femmes esposées*,” it seems as if the  
 attendance was required of *all other women* not so ex-  
 empted, viz. the *unmarried*, who, surely, may be in-  
 cluded in the general term — *d’ tous del Hundred*,  
 “ of all persons within the Hundred,” — especially as  
 their attendance to hear the charge concerning the sever-  
 al legal ARTICLES OF ENQUIRY would enable them  
 more effectually to promote, by their influence, that  
 love

verdict of TWELVE<sup>e</sup> “*Freemen at*  
 “*the least; for a villaine*” (meaning a  
 villein, i. e. a bondman or serf<sup>d</sup>) “*can-*  
 “*not indict a Free-man, nor any other*  
 “*who*

love of *right* and *justice*, for which the virtuous part  
 of the sex are most eminently distinguished; and their  
 better knowledge of the *Common Law* would enable  
 them *sometimes*, perhaps, to prevent the breach of it,  
 but, *at all times*, enable them to aid it by true and can-  
 did information in behalf of RIGHT] “*mes per les AF-*  
 FEREMENT d’ xii. *Frank homes al meins*” (the translator  
 has unluckily omitted this most material circumstance  
 concerning “*a Jury of TWELVE at the least*”) “*car*  
 “*Serfs*” [“*there are now no Serfs (God be thanked!)*  
 In England, though a strenuous attempt was made some  
 years ago to engraft the detestable West-Indian *slavery*  
 on the old rotten stock of *willenage*, which it pleased God  
 to enable me to cut up by the roots, contrary to my  
 own expectation or even hope, being at that time utterly  
 ignorant of law, having never till then opened a single  
 book of it, but I was compelled by a particular unfore-  
 seen circumstance to search the books in mere *self de-*  
*fence!* But though there are now no *Serfs*, yet the doc-  
 trine of this article holds good with respect to all per-  
 sons under confinement, or sentence, or *charge*, for  
 crimes, who are to be deemed *bondmen* (though not  
*Serfs* or *private property*) till they are enlarged] “*ne*  
 “*poit nul Frank-bime*” [“*and every man, not charged*  
 with crimes, is to be deemed a *freeman*] “*enditex ne*  
 “*nul auter qui n’est receivable a suite faire en mesme les*  
 “*Courts.*”

“ who is not receivable to doe suite in”  
 the same “ Courts, and therefore it “ was  
 “ anciently ordained, that none should re-  
 “ main in the realm if he were not in  
 “ some *Decenny*” (or Tithing) “ and  
 “ *pledge*”-ed “ of *Freemen*: it belongeth  
 “ also to *HUNDREDOURS*” (the chiefs  
 of *Hundreds*, who are High-Constables)  
 “ once a year to” view “ the *Frank-*  
 “ *pledges*, and the *pledg*”-ed, “ and there-  
 “ fore

“ Courts.” [In the Old Version it is rendered “ in-  
 “ ferious Courts:” the translator probably supposed the  
 true reading to be *mes'n*, or *menues*, *meen*, little or in-  
 ferior Courts.] “ *Et par ceo que ordaine fuit auncientment*  
 “ *que nul ne denuorast*” (probably for *demeurât*) “ en le  
 “ *royalme s'il ne soit en DIZEN; et plewy de Frank-*  
 “ *homes; appent aux HUNDREDORS d'viewer*” [in the  
 Old Version it is rendered to *shew*] “ *un foits per le an*  
 “ *les Frankpledges, et le plewies;*” [in the Old Version  
 rendered *pledgers*; but the *Frankpledges* themselves are  
 the *pledgers*, who pledge, not only each other, but also  
 all the lodgers, journeymen, servants, &c. that are  
 not *housekeepers* in each Tithing, and these latter are  
 properly the *plewies* or *pledged*, and are so distinguished  
 from the 10 *FRANKPLEDGES* OR *DECINERS*;] “ *et par*  
 “ *ceo sont tiels views appelles views d'Frankpledge.*”

“ Les



“ fore are the viewes called the View of  
 “ Frankpledges;” or rather, and for this  
 are such viewes called the Views of Frank-  
 pledge.

“ The Articles<sup>1</sup> are these.”

1. “ By the oaths you have taken,  
 “ you shall declare whether all they,  
 “ who ought, do appear or not.” In  
 the supposed Statute of 18th Edward II.  
 before-mentioned, the first article is, —  
 “ You shall say unto us, by the oath that you  
 “ have made, if all the JURORS that owe  
 “ suit to this Court be come, and which  
 “ not.” In both copies the presence  
 of the JURY is necessarily to be under-  
 stood,

“ Les Articles son ceux.” (†The Articles are suitable  
 to Court Lectes as well as Views of Frankpledge: they are  
 the principal heads or topics of enquiry to be mentioned  
 in the charge of the Hundreder, or Chief of the Court,  
 to the Jury.)

1. “ Vous nous direz par vous seremens si tres tous sont  
 “ qui la devoient venir a la jornee.”

stood, as appears by the mention of their oaths, and of course we must suppose a previous summons or *impannel*, to be the foundation of the business, so that it now seems a very proper question to begin with, as well at *Views of Frankpledge* as at all other *Court-Leets* or *Tribings*, and, likewise, at *Hundred-Courts*, viz. "If all the JURORS be come, Sec. and which not." — That the absentees may be duly amerced if they cannot assign a legal *essoine* or admissible excuse.

2. "If all the Free-men<sup>s</sup> of the HUNDRED, or of the Fee," (Fief or Manour,) "be present."

P

3.

2. "Si tous les Franks" ("Franks in ancient times were mentioned in contradistinction to *Sorfs*, but, as *villanage* is now abolished, all men of every rank and degree are to be deemed *Franks* or *Free-men* in the Congregational Courts) "des Hundreds ou del fief sont present."

3.

3. "If all the Frankpledges" (or, rather, the Chief Pledges,<sup>1</sup> Tithingmen or Headboroughs) "have their Doziens" (Decenaries or Tythings) "entire," (or complete,) "and all those" whom they have pledged.

4. "If all those of the HUNDRED, "or of the fee," (or fief,) "of the "age of 12 years and above, have "sworn fealty to the King;"<sup>m</sup> and of the "receivers

3. "Si tous les Frankpledges eient leur Dozeins entiers. "Et tous ceux que ils ont plevies." (1 This interpretation answers to N° 5, in Fleta's 52 chap. lib. 2. which I believe to be the true reading, instead of "Frankpledges." — "Si omnes CAPITALS PLEGII "venerint sicuti venire debent, et si DECENNAS suas "habuerint." See also the supposed Statute of 18th Edward II. N° 2. "If all the CHIEF PLEDGES, or "their Dozens be come, as they ought to come, and "which not.)

4. "Si tres tous ceux del Hundred ou del fief d' xii. ans "ensuis font jure fealite al roy, et de receivers d'autres "escient." (<sup>m</sup>To tender the oaths of allegiance to boys of 12 or even 14 years of age seems very exceptionable, and therefore I am happy to find that this does not seem to have been originally intended to be required,

“receivers” of others wittingly” or knowingly.

P 2

5.

required, for by the copy of this article in Fleta, all that is required of such very young persons is their being entered and pledged in some Decenary. — “*Item si omnes duodecim annorum et ultra sint in Decenna.* — Enquiry should also be made whether all persons of that age attended the *View of Frankpledge* as they ought. See Fleta, N<sup>o</sup> 8. “*Item si omnes DUODECIM ANNORUM et ultra venerint sicut debuerint.*” This corresponds with the 3d Article of the supposed Statute of 18th Edward II. as expressed in my old Edition of 1529. “*Et si toutz de DOUZE ANS sont en l’assise nostre seigneur le roy et queux ne sont mye, et qui les rescote.*” Which is falsely rendered in the common version, viz. “*And if all the DOZENS*” (instead of all DE DOUZE ANS or of 12 years) “*be in the assise of our Lord the King.*” (the *View of Frankpledge* being that *assise*, — “*EO QUOD DIES REGIS EST*, because it is the King’s day,” as Fleta says, (N<sup>o</sup> 36,) “*et in favorem pacis fuit inventus,*”) “*and which not, and who received them,*” i. e. in what households are they lodged: and the remaining part of the article is also better explained in Fleta concerning “*Receivers of others*” by another distinct article, (N<sup>o</sup> 7;) “*De hiis qui non sunt in DECENNA, qui fuerint CLERICI, qui MILITES, qui forisfamulaverint, et qui alii, et de quorum manupastu fuerint. Et si qui fuerint vagantes, de quibus habetur aliqua presumpcio vel suspicio mali, TUNC DE EORUM RECEPTORIBUS.*”

5.

5. "Of all blood" feloniously "shed," [to which I will add a necessary article of enquiry from the imaginary statute of 18th Edward II. viz. "Of" (any) "wound made" — "et de play fait" — (Edit. of 1529) — which in the common version is falsely rendered — "and of" "frays made" — however, even frays, though there be no wounds in consequence of them, may, as breaches of the peace, be punished by the Common Law, which is competent to find effectual remedies.

5. "D' tout SANGS pechieusement espardeu, de HUY  
 " et CRY leuy a tort ; ou a droit, leuy et niens suivoit  
 " deuant, et des refusés d' ceuz que encuntraient d' tous  
 " mortals pechieux en tous especes ; come des principals et des  
 " accessaries." This article is differently expressed in  
 Fleta, Sec N<sup>o</sup> 9. "Item de burgatoribus, robbato-  
 " ribus, et latronibus, falsariis, homicidis, com-  
 " bustoribus domorum, et eorum fautoribus, et RE-  
 " CEPTORIBUS." His 13th article may also be  
 placed here very properly, — "Item de mabomatoribus,  
 " et vulneratoribus, inprisonatoribus, et alia contra pacem  
 " terra facientibus." The enquiries concerning *He*  
*and Cry* are expressed in another distinct article in Fleta.  
 (Sec

remedies for all immoralities and nuisances,] “ of hue and cry wrongfully levied,  
 “ or rightfully levied, or rightfully le-  
 “ vied and not duly pursued, and of the  
 “ names of” those who pursued; “ of  
 “ all mortal” sinners of all kinds; as  
 of the principals also of the accessories.

6. “ Of all exiles, outlaws, waives,  
 “ and banished persons returned, and WHO  
 “ HAVE SINCE RECEIVED THEM, and  
 “ of those who have been adjudged to death  
 “ or abjured the realm.”

7.

(See N<sup>o</sup> 16.) “ *Item de brutis levatis injuste; vel si juste.*  
 “ *non profectis, qui se locutorum,*” (this was to  
 prevent false alarms by wanton people,) “ *et per quos*  
 “ *deficit secta.*” This is the 17th article of the sup-  
 posed Statute of 18th Edward II. “ *Des Huzs levés*  
 “ *et nient pursues.*” “ Of CRIES levied” (or raised)  
 “ and not pursued.” And the articles concerning  
 housebreakers and common thieves are the 12th and 13th  
 of the said supposed Statute, viz. “ *Of breakers of*  
 “ *houses and of their receivers; of common thieves and of*  
 “ *their receivers.*”

6. “ *De tout exils, uslagies, waives, et bannisse retournes,*  
 “ *et que*” (for qui) “ *ont aux puis racoises, et de come*  
 “ *que*” (for qui) “ *ont ete condempnes a la mort ou for*  
 “ *jures*”

7. "Of" Christians (that are) "usurers and of all their goods."

8. "Of treasure trove," (i. e. found,) "wrecks, waifes, estreyes, and of every purpresture and encroachment upon the King, or upon his dignity."

9.

"*jures le royaume.*" Compare this with Fleta, N<sup>o</sup> 10. "*Item de uslagatis vel abjuratoribus regni reversis, et de eorum bonis et* RECEPTORIBUS." And with N<sup>o</sup> 20 of the articles of 18th Edward II. "Of persons outlawed returned, not having the King's warrant."

7. "De Christians usurers, et d' tous leurs biens." The Jews, it seems, were the only people, at that time, permitted to practise usury; but no distinction is expressed in Fleta, see N<sup>o</sup> 14, in which some other articles of enquiry are added. *Item de USURARIIS, Sortilegis, Apostatis, Traditoribus, et eorum catallis et* RECEPTORIBUS.

8. "De treasure trove," (see also 23d article of the supposed Statute of Edward II.) "wrecks, waifs, estrayes, et d' chescun purprise et occupation fait sur l' Roy ou sur sa dignity." All encroachments upon public streets, or upon highways, (by land or by water,) are to be deemed purprise or encroachment upon the King. In Fleta this article is different in some particulars. See N<sup>o</sup> 11. "*Item de THESAURO INVENTO, murdris, et weywis profecuto retento.*" See also N<sup>o</sup> 25. "*Item de purpresturis super Regem vel dominum factis.*"

9.

9. "Of all wrongs done by the King's officers and others to the common people."

10. "And all purprestures" (or private encroachments) "in" (any) "place" (that is) "common," (or belonging to the public,) "in the land, or in the water, or elsewhere." 9

II.

9. "De cheſcun TORT fait per les ministres l' Roy, et autres al cominaltie del people."

10. "Et des pur prestures fait en lieu comon, en terre, ou en eauwe, ou ailleurs." 9 This article also, as well as N° 8, includes the enquiries for encroachments on streets, roads, rivers, &c. as being places that are common or public; but in Fleta this enquiry is ordered by a distinct article. See N° 20. "Item de viis et semitis injustè obstructis vel arctatis. Thus, not only the obstructing, but also the contracting or narrowing, of roads and paths is to be guarded against by the Court of Frankpledge. See also what is called the Statute of Frankpledge. (18th Edward II.) "Des voies et Semites amenues" (diminished or contracted) "ou estoppes," (or stopped up.) And also the three preceding sentences relating to encroachments, viz. "Des purprestures faitz en terres, boys, et en eues a usance. Des mures, measons, fosses, et hayes leues ou abatus a usance. Des boundes sustreitz et emportez." And then follows the former quotation. "De voies et Semites amenues ou estoppes." Enquiries which should never



11. "Of boundaries removed to the  
"common nuisance of the people."

12. "Of every breach of the assise of  
"bread, beer, wine, clothes, weights,  
"measures, beams, bushels, gallons, ells,  
"and yards, and of all false seals, and of  
"those who have used them."

13.

never be omitted. See the Common Version in the Statute-book, articles N<sup>o</sup> 7, 8, 9, 10, and 11, viz. "Of purprestures" (encroachments) "made in lands, woods, and waters to annoyance. Of walls, benches, dikes," (or rather ditches,) "and hedges, set up or beaten down to annoyance. Of bounds withdrawn and taken away. Of ways and paths opened or stopped. Of waters turned, or stopped, or brought from their right course." Most of which articles are expressed in the before-cited chapter of Fleta, N<sup>o</sup> 18 and 19. "Item de aquis trespassatis vel obstructis. Item de fossatis, muris, calcis, stagnis, vel hujusmodi ad nocendum levatis, prostratis, vel exaltatis."

11. "Des boundes removes a common nuisance." In Fleta, N<sup>o</sup> 17, may answer to this, as the divisions there mentioned include bounds of division as well as common fences. "Item de DIVISIB<sup>us</sup> fractis, remotis, vel minoratis."

12. "De chesc. assise enfreint d' paine, cerwoist, wine, draps, poys, mesares, trons, bouffeaux, gallons, uhnes, et talheps, et d' tous faux ballances, et que les ont  
"usces."

13. “ *And of those who have bought by one kind of measure, and sold by another kind in deceit of merchants, or buyers.*”

14. “ *Of the disturbers of framing lawfull judgements, and of the framers of wrongfull judgements, and of the abettors, and consenters thereunto.*”

Q

15.

“ *uses.*” The same in substance with Fleta, N<sup>o</sup> 21 and 27. “ *Item de falsis mensuris et ponderibus, et rebus assisas Regis violantibus.*” — “ *De violatoribus assise panis, cervisie, vini, et pannorum.*” And, in the articles of 18th Edward II. the substance of this is included in three articles, N<sup>o</sup> 24, 25, 26, viz. “ N<sup>o</sup> 24. *Of the assise of bread and ale broken.* N<sup>o</sup> 25. *Of false measures, as of bushels, gallons, yards, and ells.* N<sup>o</sup> 26. *Of false balances and weights.*”

13. “ *Et qui ont achaty per un manier d’ pois et de mesures, et vendue per autre manner en fraude des marchants.*” This article is N<sup>o</sup> 27 in the supposed Statute, “ *Of such as have double measure, and buy by the great, and sell by the less;*” apparently meaning, measures which are nominally the same, but various in size to gain undue advantage both in buying and selling.

14. “ *Des disturbes des fornissements des loyals jugemens, et d’ fornissors de forceous, et des offessors, et consentants.*”

15.

15. "Of every wrongful detinue" or detaining "of the body of a man, or other "distresse," taking, or arrest, whether of body or goods.

16. "Of every false judgement given," for the other view; (meaning, perhaps, a retrospect to the preceding view,) "in "the Hundred or Fee."

17. "Of every fore-stallment done in the "common highway."

18.

15. "De chescun torceous detenue d' corps de home, ou "d' autre naam." Naam or name is Saxon for a taking or seizing any person. Hence the "Capias in Wither-nam," from name, captio, and wither, contra, a writ of reprisal to take either the body, or the chattels, of any oppressor who should be justly suspected of having taken and concealed any person in private durance, or to take the goods of those who had unjustly seized the goods of others, until restitution and satisfaction should be made.

16. "De chescun faux jugement done par l'autre view "en le Hundred, ou en le fief." In the old version this is rendered "given by the view in the other Hundred," which does not sufficiently agree with the original French, and there is no corresponding article in Fleta to enable me to find a more satisfactory rendering.

17. "De chescun forstall faits en le common chemin."

18.

18. "Of" all "wrongfull replevies;"  
 i. e. either for regaining possession of goods that have been duly distreined, or for the *bayling*, and setting at liberty, men that have been duly committed to prison. This seems a very *proper article of enquiry*, though it is not obvious at first sight how it can be deemed a translation of the article as expressed in the French copy of *Horn*; but in the false

Q 2

Statute

18. "D' tous torceous vees." This word being *abbreviated* I can only guess (like the former translator) at the word intended to be understood. *Vees* may be an abbreviation for the plural of *veue*, the proper French word for *visus*, a *view*, and may refer to the "wrongful views" mentioned in article 16, i. e. to any *false judgements* that may have been given in the *preceding views*. "Torceous vees" may also signify partial or "favourable inquests taken by the sheriff;" and, so also, if the word intended should be *venues*, torceous *venues*, meaning *PACKED JURIES*, or juries not duly chosen out by oath from the proper *vicinage*, &c. whereby the sheriffs were enabled to *replevie*, or *bail*, malefactors that otherwise were not *bailable*; and, in this sense, the word "vees" also answers to the translation given above. As a remedy to such "wrongful views"

or

Statute of *Frankpledge* there is an express article for it, viz. “ *Des gentes em-  
“ prisonnes, et puis lesses sauns garauntie.*”  
See N<sup>o</sup> 32 in the English copy of 18th  
Edward II. “ *Of persons imprisoned, and  
“ after let go without mainprise,*” i. e.  
without finding sureties, either as *bail*  
for their appearance, or as securities for  
the peace, and their future good beha-  
viour.

19.

or “ *favourable inquests,*” the 11th chapter of *Westminster Primer*, or 3 Edward I. A. D. 1275, cap. 11, is expressly ordained. In my old edition of 1529 (before-mentioned) it will be found in the 12 chapter. And in the 16th chapter of that edition of the *Primer* (in the common edition, chap. xv.) particular directions are given to distinguish the several cases wherein *bail* or *replewin* may be lawfully given or lawfully refused; and that chapter is copied, not only at length, but even with some additions by Fleta in his useful chapter, concerning the *Sbiriff's Turns* and *Views of Frankpledge*, to which I have such frequent occasion to refer on this subject. He also directs a distinct article of enquiry, concerning *bailable persons detained, and unbailable persons dismissed*. See N<sup>o</sup> 29. “ *Item de replegiabilibus  
“ injustè detentis, et irreplegiabilibus dimissis.*”

19.

19. "Of" all "wrongful rescouffes,"  
or rescues."

20. "Of every outragious distresse in  
"another fee, (or manour,) "or in the  
"market for a forraign contract."

21. "Of all bridges broken, and causies,  
"wayes, common bridges, and who ought  
"for to repaire them."

22. "Of the makers of cloatbes dwelling  
"out of great towns in places forbidden,"  
and "of tanners and of curriers of lea-  
"ther."

19. "D' tous torceous rescouffes," or "resistance against  
"a lawful authoritie;" (says Dr. Cowell,) "as for  
"example, if a baylife or other officer upon a writ  
"doe arrest a man, and another, (one or more,) by  
"violence, doe take him away, or procure his escape;  
"this act is called a RESCUS." In the supposed Statute  
of 18th Edward II. the 19th article seems to have the  
same object of enquiry, viz. "Of escapes of thieves or  
"felons."

20. "D' chescun outragious distresse ou en autre fee, ou  
"en market pur forreim contract."

21. "D' tous PONTS rompues et CAUSIES, et chemins,  
"common briages, et qui les doit repaire." See also  
N<sup>o</sup> 33, in Fleta, "Item de PONTIBUS et CALCETIS  
"fractis."

“*tber.*” This article is very different from the French original, as well as from Fleta, and the supposed Statute of Edward II. and it is not easy to trace from any, or all, of these copies what has been originally intended. According to the old copy of the Myrroure it should be “*of the dressers (or patchers) of old cloths dwelling*” &c.\* as if the object was to prevent a secret vamping-up of old, unsaleable, or damaged, clothes in order to pass them for new. In the articles of 18th Edward II. (N<sup>o</sup> 30,) it is “*of cloth-sellers and curriers of leather dwelling out of merchant-towns,*” which I should suppose to respect rather

22. “*Des addoubers de viels draps demorrants hors de grands villes en lieux defendues.*”

“*Des tannors et blancheors d' quirres. Et d' main curriers.*” I have joined these three sentences under one article, or head of enquiry, because I find them so connected in the supposed Statute of 18th Edward II. “*Des vendours des draps et curriours des quirrs ailleurs que en villes marchandes.*”

the

the *markets*, than the *dwelling*s, of the *cloth-sellers* and *curriers*, viz. that all wholesale dealing in *cloths* and *leather* should be at public markets, established in great towns like the famous *cloth-markets* at Leeds and Halifax, and like the great *leather-market* in *Leadenball*, that proper market prices may be regularly ascertained and known for the common benefit of the manufacturers as well as merchants.

And, if this be really the intention of the article, it will enable us the better to understand how far a man was formerly prohibited from exercising two several trades, viz. not any two trades in general, but only such trades as are so particularly connected together, that the exercise of both by one man might, in some degree, affect the public markets, and (like *forestalling*) prevent the fixing of  
regular



regular market-prices; and even this *limitation* must be *limited* to such trades only which may affect the *necessary articles of life*; for so, I think, we may understand the examples recited by Fleta; “that the *shoe-maker*” (and, of course, all other consumers of *leather*, the *sadler*, the *breeches-maker*, the *glove-maker*) “*shall not be a tanner*,” (for, otherwise, the proper market-price for *leather* could not be so easily ascertained,) “*nor the tanner a butcher*,” (which would injure the *fell-market* for *pells* and *bides*, and would give him an undue advantage over other tanners,) “*nor the business of a taylor*” to be exercised (perhaps) by a *clotbier*, or manufacturer of cloth, which would injure the *clotb-markets*; but of this last article I am uncertain; for I acknowledge that I do not understand what is meant by the abbreviated words

In the original, and no article of enquiry ought to be formed on a *doubtful* question.

23. "Of butchers," and those "who sell unwholesome flesh for that which is sound." And tainted or "spoiled" (either through too long keeping or want of cleanliness\*) "for well-conditioned."

24. "Of all those who sell corrupt wine for sound wine."

## R

25.

See Fleta, the same chapter, No 35. "Item de abbatoribus corcorum, præterquam in civitatibus et burgis, et etiam de his qui duobus utuntur officiis, videlicet sutoriz, et tanneriz, vel tanheriz et carnicis, vel officio scissoris et dub, et etiam dub, præterquam in burgis et locis communibus; et plures sunt articuli."

23. "Des butchers et ceux vendent chair suffisante par sans, et gastre. par bien eis." "Those butchers who blow up meat with their breath are presentable, (according to Mr. Robert Powell's treatise of the antiquity, authority, &c. of the ancient Courts of Leits, &c. p. 114.) and, of course, are *finable*."

24. "D' ceux qui vendent vin perry par sans."

25.

25. “ *And*” (of those who sell)  
 “ *beer*” (or) “ *ale, raw, and not well*  
 “ *brewed, for that which is good and*  
 “ *wholsome.*”

26. “ *Of small larcines,*” or thefts,  
 commonly called “ *petit larceny,*” when  
 the goods stolen do not exceed the value  
 of twelve-pence.

27.

25. “ *Et servoise crue ou rouffe ou de fèves*” (or made  
 of beans) “ *ou deceraie*” (perhaps for de cerelle, a fort  
 of perry) “ *pur couenable et sane.*”

26. “ *Des menues larcins.*” In the articles of 18th  
 Edward II. some particular kinds of petty thefts are  
 specified. (N<sup>o</sup> 14.) “ *Des petitx larons come des oves,*  
 “ *selens, ou garbez.*” (N<sup>o</sup> 15.) “ *Des larons queux*  
 “ *sakent draps ou garbes.*” Which, in the common  
 version, are rendered, “ N<sup>o</sup> 14. *Of petty larons, as*  
 “ *of geese, hens, or sheafs.* N<sup>o</sup> 15. *Of thieves that steal*  
 “ *clothes, or of thieves that do pilfer clothes*” (to which  
 the translator has added) “ *through windows or walls;*”  
 as if he understood “ *garbes*” to bear a different sense  
 from *garbez* in the preceding sentence, signifying  
*gerbes*, or sheaves of corn, but to mean literally *garbes*,  
 garments, clothes, shirts, or any part of our *garbe* or  
 dress, which thieves might be tempted to pilfer from  
 open windows, walls, &c. Fleta has this article  
 of *petty larciny*, but he has prefixed to it the article of

*cutters*

27. "Of cutters of purses,"  
 28. "Of those who suffer people to use  
 "any mysterie for reward or fee."  
 29. "Of receivers of thief-boot," i. e.  
 receivers of "stolen goods."

R 2

30.

*cutters of purses*, whose crime, when they do not fail in the attempt, can seldom be ranked as *petty larciny*, unless we may use the term of *cut-purse* to be applicable to all those petty villains whom we commonly call "*pick-pockets*." See *Fleta*, N<sup>o</sup> 15. "*Item de scissoribus bursarum, et latronibus de modicis latrocinii, aucarum,*" (of geese,) "*garbarum,*" (of sheaves,) "*pannorum,*" (of clothes,) "*et hujusmodi.*"

27. "*Des scissors de burses.*"

28. "*D' ceux qui les suffrent user leur mestier par loier.*" "Of those who suffer" (other) "persons to exercise their trade for hire." This perhaps may relate to the several particular branches of trade before-mentioned, (in p. 127 and 128.) two of which cannot lawfully be exercised by any one person for the reasons before assigned. And this article may be intended to deter tradesmen in any of these branches from permitting tradesmen of different branches from carrying on the prohibited union of trades, in their name, for hire.

29. "*D' pervers d' thefboot,*" probably the same kind of persons may be intended by "*the redeemers of robbery*" mentioned in *Fleta*. See N<sup>o</sup> 30. "*Item de redemptoribus latrocinii.*"

30.

30. "Of makers and baunters of false dice."

31. "Of outrageous toll-takers," i. e. those who take more toll than the law directs,

32. "Of all other" cheaters (or trickers) and "deceivers."

33. "Of all manner of conspirators."

34. "And of all other articles available for the destruction of offenders."

"And the presentments are to be sealed" (continues the author of the Myrrour)

"with

30. "D' sefers et baunters d' faux dice."

31. "D' outrageous tollers."

32. "D' tous trechours et deceivers."

33. "D' tous manners conspirators."

34. "Et de tous autres articles qui valent purront a peccer destruer." This article must, of course, include all the other articles mentioned by Fleta, and also in the articles of Edward II. though they are not particularly mentioned in the Myrrour.

"Also of the breakers of goals, the ravishers of women, and the seducers of wives, and of nuns," or single women. (N<sup>o</sup> 12.) "Item de fractoribus goalarum, raptoribus mulierum, et abductoribus uxorum et monialium."

In

“ with the seals of the jurors, so that  
 “ none, by fraud, doe increase or diminish  
 “ them;”

In the articles of 18th Edward II. c. 21. *Of women  
 “ ravished not presented before the coroners.”* “ *De rape  
 “ de femi qui n’est my present devant le coroner.*” Which  
 should rather be rendered. “ *Of the rape of woman  
 “ which is not presented before the coroner.*” This in-  
 cludes not only the detestable acts of violence, which  
 alone is expressed by the former rendering, but also the  
 seduction or carrying off a minor even with her own  
 consent, which in law is deemed a *rape* because of the  
 nonage. The old Saxon laws punished every lascivious  
 affront, or impudent incivility, to women, which might  
 be deemed a leading step to greater injuries, by pro-  
 portionable *amerancements*, which the *Const-Laws* and  
*Views* may surely resume, if they please, in favour of  
*morality*, to vindicate the just rights of modest women,  
 and to promote honourable marriage, which is notori-  
 ously hindered by the prevalence and facility of whore-  
 doms, and by the general neglect of doing justice to  
 poor, injured, helpless, girls, by punishing their se-  
 ducers,

\* It is unreasonable and unnatural that all the difficulties and ill  
 consequences of temptation between the youth of both sexes should be  
 cruelly laid upon the weaker vessel, whereby she is too often irrecove-  
 rably lost, and added to the pitiable swarms of wretched female sedu-  
 cers to revenge her injury on the other sex by the communication of a  
 loathsome disease, till her wretched career in the service of Satan is  
 closed by a miserable and hopeless death! The *marriage act* has  
 greatly added to the promotion of these evils, by taking away the force  
 of contracts, and other circumstances of the *common law*, that was  
 favourable to the cases of injured young women, and this merely to  
 indulge the unreasonable pride of families!

“ them; and that which cannot be re-  
 “ dressed there by these presentments is  
 “ presentable at the shiriffes first turne;  
 “ and those things which the sberiffes  
 “ cannot redresse are to be presented by the  
 “ sberiffes into the exchequer.”

“ All

ducers, who, in ancient times, would have been com-  
 pelled to marry them.

The coroners were particularly required to vindicate  
 the rights of females by enquiring after rapes, as ap-  
 pears by the last quotation from the articles of 18th  
 Edward II. This circumstance is not mentioned in  
 Fleta, though we there find a distinct article respecting  
 coroners, in which, however, this crime, as being a  
*felony*, must necessarily be included. — “ *Item de felonis*  
 “ *quorum clamor non pervenit ad coronatores.*” — “ *Also*  
 “ *concerning FELONIES, the cry of which did not reach*  
 “ *the CORONERS.*” The rights of the crown ought  
 also to be enquired after at the *turns* of the sheriffs, and  
 at *Views of Frankpledge*, (and undoubtedly also at other  
*Leets*;) not only of alienations of land, &c. but also of  
*escheats* of every kind, and of the  *fines, amerciaments,*  
 and other profits, of these popular courts, which, how-  
 soever they may have been granted to private lords of  
 manours, may always be resumed according to the true,  
*legal*, doctrine of “ *nullum tempus occurrit Regi,*” as *res*  
*fiscalis*, a branch of the public reveaue, which ought  
 never to be sold or transferred by any King to another  
 person, being “ *res quasi sacra quæ dari non potest, nec*  
 “ *quædi,*

“ All those who are presented for any  
 “ offence which is mortall, and banished  
 “ persons who are returned, and their  
 “ receivers, and those who are not in  
 “ allegiance under the King, are to be  
 “ seised upon, and their goods to be seised  
 “ into the King’s hands.”

“ And

“ *utendi, nec ad alium transferri a principe vel a Rege*  
 “ *regnante;*” whereas it is otherwise in the alienation  
 of lands, tenements, &c. in which, “ *tempus currit*  
 “ *contra Regem sicut contra quamlibet privatam personam,*”  
 as I have shewn in a distinct tract on that doctrine.  
 But the more sacred branches of the public revenue,  
 those which are properly *res fiscalis*, should be carefully  
 enquired after; for, if they were duly levied and paid  
 into the exchequer to the public account, they would  
 considerably augment the national treasure without  
 burthening the people, nay, they would be really, on  
 the contrary, profitable to the people, not only in a  
 moral sense, by restraining vice of every kind, but also in  
 pecuniary advantage, by lowering the poor’s rates, and  
 by aiding the national treasury, in so essential a manner  
 as would render less taxes necessary.

The 22d article in Fleta, charges the *Leet*-juries with  
 the conservation of the rights of the crown. “ *Et si in*  
 “ *TURNIS VICOMITIS vel VISIBUS HUNDREDARUM*  
 “ *tunc sic, de jure regis relato, vel alienato in terra, vel*  
 “ *in*



“ And although it be so that the bailiffe  
 cannot beare and determine any action  
 AT THE LEETE,” (in the original it  
 is “ A LA TORNEE,”) “ neverthelesse  
 if any one present be grieved by any  
 wrongfull

“ in mari, per quem fuerit alienatum, vel celatum, et a  
 quo tempore.”

Notice should also be taken of any new customs or  
 usages set up either in land or water. See Fleta;  
 N<sup>o</sup> 32. “ Item de novis consuetudinibus in terra vel in  
 aqua levatis.” To which should also be added a  
 strict enquiry after old customs and usages withdrawn,  
 especially of those which were due to the popular courts.  
 See the articles of 18th Edward II. N<sup>o</sup> 6. “ Of cus-  
 toms and services, due to this court, withdrawn, how  
 and by whom, and in what bailiff’s” (or hundreder’s)  
 times.” There are a few other circumstances of en-  
 quiry peculiar to the articles of 18th Edward II. viz.  
 “ De ceux queux vount en message dez larois.” See N<sup>o</sup> 16  
 in the common version. “ Of such as go in message for  
 thiefs.” N<sup>o</sup> 22. “ Of clippers and forgers of money;”  
 (fauseours de la money;) rather falsifiers of money;  
 N<sup>o</sup> 28. “ Of such as continually” (rather “ assiduously”  
 — “ affiduelment”) “ haunt taverns, and no man  
 knoweth wheroun they do liue,” or “ from whence this”  
 (expence) “ comes;” “ et home ne syet dout ceo vine.”  
 N<sup>o</sup> 29. “ Of such as sleep by day, and watch by night,  
 and fare well, and have nothing.” N<sup>o</sup> 31. “ Of such  
 as flie unto church or church-yard, and after depart  
 without

“ wrong full presentment, and complain  
 “ thereof; or if the Bayliffe or Steward  
 “ have a suspition that the Jurours be, in  
 “ some case, perjured, by concealing of any  
 S “ offence

“ without doing that which belongeth thereunto.” The  
 latter part of this sentence is differently expressed in the  
 original, viz. “ *Et puis sen vount sauns faire l’assise.*”  
 Churches and church-yards no longer afford protection  
 to delinquents, but there are still some *priviledged*  
*places* which should be so regulated as not to afford a  
 temporary shelter to debtors, &c. merely to enable them  
 to illude “ *the due process of the law,*” and then to escape  
 without making any proper advances towards satisfying  
 the law. “ — *sauns faire l’assise,*” which, I suppose,  
 should rather be *l’assise*, i. e. without demanding a due  
 enquiry into their case by *inquest* or *assise* of a jury.  
 The priviledge should afford them, indeed, a short,  
 temporary, asylum from any single, merciless, credi-  
 tor, yet not so as to favour their escape, but merely to  
 give them time to call their other just creditors toge-  
 ther, in order to make an equal division, as far as their  
 effects will go, after giving up *all* upon oath, and then  
 to be absolutely at liberty by the *common law* without fear  
 of farther arrest if there is no just suspicion of conceal-  
 ment. The “ *due process of the law*” is sacred, and  
 ought not to be baffled (nor even *delayed* in any other  
 manner than what I have described) by abuses of *privi-  
 ledged places*; and therefore all *Court-Leets* or *tribings*  
 are competent, as being “ *Courts of the King,*” to  
 vindicate the *law*, and to limit the asylum of *privi-  
 ledged*

“ *offence which is presentable, or of any  
 “ offender; it is lawfull for the Bayliffes,”*  
 (or Stewards,) “ *by twelve more discreet  
 “ men,”* (in the original — “ *per xii.  
 “ plus vaillant,”* “ more courageous”

OR

*ledged places* within reasonable bounds, so as to *relieve* oppressed debtors without *violently injuring* the *just rights* of creditors. The old common law custom before-mentioned in behalf of debtors, viz. that they should be absolutely relieved from the fear of arrest, by giving up all their effects, upon oath, amongst their creditors, was called, in the North of England, “ *swearing themselves bare,*” and I remember some instances of it several years ago, but whether it is still in use I do not know: it is, however, a *reasonable usage*; which, under the regulation of *Court-Leets*, (were they universally revived,) might prevent the *imprisonment*, and consequent *ruin*, of many useful and industrious members of society. The only circumstance remaining to be cited from the articles of 18th Edward II. is N<sup>o</sup> 33. “ *Of such as take doves in winter by door-falls or  
 “ engines.”* Door-falls are not mentioned in the original, but “ *laces,*” for *lacets*, *nooses* or *suars*. Some other very necessary subjects of enquiry are mentioned by Fleta though omitted in all the other lists of articles, viz. concerning *all neglects in keeping watch and ward*, and concerning the King’s high-ways not duly widened. (N<sup>o</sup> 28.) “ *Item de vigiliis non observatis, et viis rega-  
 “ libus non elargatis.”* And, lastly, (all the other  
 articles

or “ more worthy,”) “ to enquire of the  
 “ truth thereof without delay; and although  
 “ that the last *Jurours*” should “ say that  
 “ the first are perjured, neverthelesse be-  
 S 2 “ cause

articles having been already cited.) “ *Item de hiis qui*  
 “ *retinuerint probatores.*” — “ *Also of those who had re-*  
 “ *tained provers,*” or (as they were commonly called)  
 “ *approvers.*” An approver “ *signifieth, in our common*  
 “ *law,*” (says Dr. Cowell,) “ *one, that confessing*  
 “ *felony of himselfe, appealeth or accuseth another, one or*  
 “ *more, to be guilty of the same; and he is called so,*  
 “ *because hee must PROOVE that which hee hath alleadged in*  
 “ *his appscale.* Staunf. pl. cor. fo. 142. *And that*  
 “ *proofe is by battell, or by the countrey, at his election that*  
 “ *appealed.*” &c. And whilst the barbarous and un-  
 reasonable custom of “ *trials by battle*” continued, a  
 hardened villain that was skilful at cudgeling, or could  
 bear a hearty drubbing, had it in his power (if it be  
 true that the *appellor* had the election of the kind of  
 trial and not the *appellee*) to compel any honest man  
 that happened to be weaker than himself, either to  
 risque the misfortune of an unequal combat, or to lose  
 his land and fly the country. An enquiry therefore  
 after the *retainers* and encouragers of such dangerous  
 knaves was highly necessary in ancient times, but the  
*approvers* of the present times, i. e. those culprits, who  
 turn *King's evidence* to save their own necks, cannot  
 now endanger the life of an honest man in trials “ *by*  
 “ *the country*” unless the jury be extremely ignorant or  
 partial; because such men, who have already confessed  
 their

“ *cause that no DECENERY*” (in the original, TESTIMONY) “ *or furour IS NOT ATTESTABLE*” (in the original, N’EST ATTEINTABLE, is not attainable)

“ *with*

their own crimes, cannot justly be deemed *credible witnesses*; so that their information is of no other avail or weight than as it may lead to more substantial evidence. And, besides the crimes already mentioned, every other act of injustice or vice whatsoever, and even mere *immoralities* (as I before-remarked) are within the cognizance of the *Court-Lords* or *Tribunals*, which are competent in themselves to find a remedy for every *inconvenience* without searching for acts of parliament, because the latter were intended, at least, to aid and promote *justice*, and not to take away or lessen the *just* power of the ancient courts in suppressing *vice* and *immorality*. The pecuniary penalties, however, ordained by statutes against various crimes and misdemeanors may afford to the Juries of *Lords* some information respecting what may be deemed an adequate *amercement*; but it cannot be levied by virtue of the statute unless there is also an express clause, giving power to *Lords* for that purpose, (like the Statute of 4 James I. c. 5. against *drunkenness*;) but as this, I believe, is very seldom the case, it is better to proceed entirely by the authority of the *common law* in all cases wherein it is not expressly altered or changed by statute. With respect to *drunkenness*, (a vice which generally precedes *most other vices*, and cannot therefore afford the least colour

“ *with lesse than TWO JURYES, and*  
 “ *because the latter JURIE is not taken,*  
 “ *but EX OFFICIO, of the Bayliffe, and*  
 “ *not in the nature of an attaint, the first*  
 “ *Jurours*

colour of excuse to any, but is rather to be deemed an aggravation to the guilt of *all vices*,) every circumstance of it ought to be strictly enquired after, and the defaulters should be regularly *amerced* without remission that they may want *money*, at least, though they do not want inclination, for that *dammable*\* vice. Profane *swearing* and *curfing*, and also every idle or heedless mention of God's holy name should be doly *maliced* at the Court. Lett without *respect of persons*, either of rich or poor, except in a due proportion of the *amertements* to their *respective* abilities of paying, that the *penalties* may be felt and regarded by offenders of all ranks, so that the *justice* of the Court may be *equal* and *effectual*.

By a statute of 31 Eliz. c. 7. some other articles of enquiry are submitted to the cognizance of court leets. viz. “ *If any person hath built, or caused to be built, any*  
 “ *manner of cottage for habitation or dwelling, or converted*  
 “ *any other building to be used as a cottage for habita-*  
 “ *tion or dwelling, without assigning, or laying, to the*  
 “ *same cottage or building, four acres of ground at the*  
 “ *least, &c. lying near to the said cottage to be con-*  
 “ *tinually*

\* “ Be not deceived: neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind, nor thieves, nor covetous, NOR DRUNKARDS, nor revilers, nor extortioners, shall inherit the kingdom of God.” 1 Cor. vi. p. 10. also Gal. v. 21.

“ *Furours are NOT to be taken ATTAINT-*

“ *ED, but are only to be AMERCED.*”

“ *And if any one profer himfelfe to*  
 “ *fwear fealty to the King, he is firft to*  
 “ *be*

“ *finually occupied and manured therewith, fo long as*  
 “ *the fame cottage fhall be inhabited.*”

The forfeit or penalty is 10l. to the King, and the up-  
 holding, maintaining, and continuing, any fuch cottages  
 is 40s. for every month. The aft does not extend to  
 cottages erected “ *in any city, town corporate, or ancient*  
 “ *borough or market town, &c.*” nor to cottages “ *for*  
 “ *the neceffary and convenient habitation or dwelling of*  
 “ *workmen or labourers in any mineral works, coal mines,*  
 “ *quarries or delfs of ftone or ftate, or in or about the ma-*  
 “ *king of brick, tile, lime, or coals, within this realm :*  
 “ *fo, as the fame cottages or buildings be not above one mile*  
 “ *diftant from the place of the faid mineral, &c.*” nor “ *to*  
 “ *any cottage to be made within a mile of the fea ; or upon*  
 “ *the fide of fuch part of any navigable river where the*  
 “ *admiral ought to have jurifdiction, fo long as no other*  
 “ *perfon fhall therein inhabit, but a fayler or man of ma-*  
 “ *nual occupation, to, or for making, furnifhing, or vic-*  
 “ *tualing of any fhip or vefffel ufed to ferve on the fea, nor*  
 “ *to any cottage to be made in any foreft, chace, warren,*  
 “ *or park, fo long as no other perfon fhall therein inhabit*  
 “ *but an underkeeper or warrener, &c.*” nor “ *to any cot-*  
 “ *tage heretofore made, fo long as no other perfon fhall therein*  
 “ *inhabit, but a common herd man or fhepherd, for keeping*  
 “ *the cattle or fheep of the town ; or a poor, lame, fick, aged*  
 “ *or impotent perfon ;*” nor “ *to any cottage to be made,*  
 “ *which,*

“ be PLEDGED in some FRANCKPLEDGE,  
 “ and put into the DECENERY,” ( “ *mise*  
 “ *en DIZEIN*,” placed in a Decenary,  
 the French word DIZEIN, for a *Decenary*,  
 being

“ which, for any just respect, upon complaint to the justice  
 “ of assize, at the assizes, or to the justices of peace at the  
 “ quarter sessions, shall, by their order, entered in open  
 “ assizes, or quarter sessions, be decreed to continue for ha-  
 “ bitation for and during so long time only as by such decrees  
 “ shall be tolerated and limited.”

But cottages “ *built upon commons or waste grounds*”  
 were allowed only three acres to be enclosed to and with  
 the same; and if “ *there be above the number of three acres*  
 “ *enclosed therewith, the overplus shall or may be laid open by*  
 “ *the owner or owners of the same wastes, &c.*” See 3d  
 and 4th Edw. VI. c. 3.

And inclosed gardens, orchards, or ponds, made in any  
 such wastes or grounds are permitted by the last men-  
 tioned act to remain to the owners, if they exceed not  
 the quantity of two acres (§. v. & vi.)

We must necessarily understand that the permission  
 in these two clauses could not have been intended to ex-  
 tend to parts of commons or wastes that have been clan-  
 destinely joined by inclosures to any neighbouring free-  
 hold land; for the latter is notorious incroachment or  
 usurpation on public rights by *land owners*, who, on  
 account of the land they already possess, are the least  
 intitled to such an indulgence.

The court leet should also enquire, “ *If there be any*  
 “ *inmate, or more families or households than one, dwelling*  
 “ or



being manifestly the root of the word *dozen*, which now bears a very different sense,) “*and*” (be) “*afterwards sworne to the King; and then he is forbidden to offend*”

“*or inhabiting in any one cottage?*” In which case the owner or occupier of the cottage forfeits to the lord of the leet 10s. “*for every month that any such inmate, or other family than one shall dwell or inhabit in any cottage as aforesaid,*” &c. See the before cited act of 31 Eliz. c. 7. which gives full power to court leets “*to enquire and to take presentment by the oath of jurors, of all and every offence in this behalf (i. e. respecting cottages, &c.) and upon such presentment had or made, to levy by distress to the use of the lord of the leet, all such sums of money as so shall be forfeited,*” &c.

We are farther informed by *Fleta*, in the chapter before cited (viz. lib. ii. c. 52.) that “*when the CHIEF PLEDGES shall have answered distinctly, says he, † to these various heads (or articles) belief is due not only to their*”

† “*Cum autem Capitales Plegii ad hæc capitula distinctè responderint, non solum est eorum veredicto fides adhibenda, verumetiam sacramento et veredicto duodecim liberorum hominum, qui super indictmentis prædictis et etiam de concealmentis prædictis onerentur veritatem declarare; nec poterunt a sacramento excusari per exceptionem, quod non sine brevi regis, eo quod illo die non habebit exceptio locum, quia concessum est omnibus libertatem visus franciæ plegii habentibus, quod sui liberi tenentes, vel alii liberi ad visus suos seclatorem in turnis et visibus jurent, non obstante ullo regio mandato, vel graviter pro contemptu amercientur, eo quod DIES REGIS EST, ET IN FAVOREM PACIS FUIT INVENTUS.*”

“ offend and common” (i. e. commune)

“ with offenders, and he is to be enjoyned

“ to be obedient to his CHIEFE PLEDGE\*.”

“ And to take this oath in these VIEWS

“ is none exempted who is past the age of 21

“ yeeres,” (a transposition of these Figures

T

viz.

“ their verdict but also to the oath and verdict of twelve  
 “ freemen, who, upon the said indictments and also upon the  
 “ said concealments are charged to declare the truth; nor  
 “ can they be excused from their oath by EXCRETION,  
 “ which (is) not without the kings writ, because that  
 “ NO EXCEPTION will have place on that day, for to all  
 “ that have the liberty of VIEW OF FRANKPLEDGE, it  
 “ is granted that their own FREE TENANTS, and OTHER  
 “ FREEMEN SUITORS TO THEIR VIEWS” (or inquest)  
 “ shall swear (act upon oath) in TURNS and VIEWS,  
 “ notwithstanding any royal mandate” (to the contrary)  
 “ or they shall be heavily amerced for the contempt, because  
 “ that it is THE KING’S DAY” (i. e. the day on which  
 the great leet after Michaelmas is held for the view of  
 frankpledge is to be deemed the king’s day) “ and IT WAS  
 “ INVENTED IN FAVOUR OF (the common) PEACE.”

\* CHIEF PLEDGE, i. e. The captain of ten, the elected  
 chief of the ten deciners by whom the newly-admitted  
 stranger is to be pledged, if he is not a householder, but  
 only a lodger, a journeyman, or a servant; but with whom  
 he is to be associated and numbered as a deciner, if he  
 has qualified himself for it by becoming a householder.

viz. 12,† is the number expressed in the original,) “ man or woman, § clerke nor  
 “ layman, except alliens, strangers, messen-  
 “ gers, or merchants, and those who are in  
 “ custody.”

“ At these Views of Turnes, and Views  
 “ of Frankpledges, ESSOIGNES HOLD”  
 (“ TIEN LIEU ESSOIGNES” effoines take  
 place, or are to be admitted) “ where  
 “ the absence of those who cannot be there  
 “ is excusable, and such ESSOINES are ad-  
 “ journable

† I have already remarked, that 12 years seems too tender an age for persons to be required to *take the oaths*, though it is certainly very proper that all persons of that age should appear at *the view* to be publicly admitted as members of the community, and to be arranged under the protection of some *decenary* of associated housekeepers, in order to be duly *pledged* to the public peace. *Bracton*, as I have before remarked, mentions the age of 14 years; perhaps 16 or 18, when youths are more capable of bearing arms, would be a more reasonable age, or even the *transposed* number 21.

§ By this it plainly appears that all young *girls*, above 12 years of age, as well as *youths*, are required to appear at the *view* of *frankpledge*, and of course are liable to be *fined* for non-attendance. *Married women* are excused by the law; but have surely a right to attend with their daughters, if they think it proper to do so.

“*journalable to the next courts following,*  
 “*that the ESSOINERS have*” (“*eyent*”  
 may have) “*their WARRANTS.*”

Thus it is manifest that the law requires all persons to attend *the view of Frankpledge*, and renders them liable not only to the censure of that court, but also to be *amerced* if they neglect to attend, and have not a reasonable excuse, or legal *essoin*, to justify their absence; so that, if sheriffs and other persons who have jurisdiction of *leets* were but convinced of the general utility of *titbing-associations*, they have already ample powers to re-establish them in their respective districts. And if the whole body of the people, both men and women, were thus regularly and systematically arranged in their proper divisions, all riots, mobbing, and illegal obstruction, at *elections*, and on other occasions of popular concourse, might be

T 2

easily

\* *I. e.* proper Certificates of a legal excuse, or admissible reason for their absence from the *View of Frankpledge*.

easily prevented; and the obscure fons of violence and anarchy might be most effectually restrained, and, by the facility of discovery, be rendered "*forth-coming*," and personally responsible for all misdemeanors, and even for such impertinencies and immoralities as ought to be curbed; because every single *unit* of our national *millions* of inhabitants, together with his or her communication and manner of living, might then be easily *traced*, as to a given point, throughout all the regular gradations of *shires, thousands, hundreds, fifties, tithings, and families*, even to the very chamber of the sculking delinquent. For, whether a country be more or less populous, it makes no difference in the efficacy and regularity of this system, because the proposed numerical divisions would still bear the same proportions exactly, with respect to each other, in either case, viz. whether the people be few or many.

And

And the lesser divisions of *tithings* are so small and manageable, that every *individual*, as well as every *family* therein, may be easily known and controuled by their elected *Chief-Pledges*, who, with their whole divisions, are again included and controuled in still larger divisions, equally well proportioned, under *superior chiefs*, or *justiciaries*. And these *justiciaries* invested with ample power of *law and right*, are so limited, with respect to *tort, wrong, or injury*, that they have no authority to act contrary to *common consent*, nor to proceed against any man without "*due process of the law*," though they have effectual means of information concerning the abode and general circumstances even of the meanest individual throughout all the *tithings* by their nearest neighbours and acquaintance. For, when the *tithings* are properly regulated with their superior divisions, each *Tithing* may truly be said to be "*as it were a wheel*"

“ *wheel in the middle of a wheel,*” (Ezek. i. 16.) and more especially so when the *rotation of watch and ward*, and of other public service, is *duly circulated* throughout all the divisions of a whole nation; for such “ *wheels*” are indeed “ *full of eyes round about,*” (Ezek. x. 12.) eyes to convey information and complete knowledge in all popular concerns whatsoever, (as I have elsewhere observed on the word *cherubim*\*,) so that the most obscure offender cannot escape the justice of the community, whenever he is duly indicted and sought.

If this ancient form of popular government was duly established, it would also regulate, with the utmost precision, the rights of all *electors*, and would completely obviate the specious *objections* against *Parliamentary Reformation* that have lately been published, in a little tract,

\* See Tracts on “ *National Defence by a Free Militia,*” p. 40 and 41.

tract, intituled “*Thoughts on a Parliamentary Reform*\*;” for it would most certainly afford the effectual means of maintaining perfect peace during the time of elections, and would render the polling of the electors, (be they ever so numerous,) not only *practicable*, but perfectly easy and free from confusion, even if the limitations of the *right of voting* were drawn out to the most liberal extent that has yet been proposed; even according to the  
*plan.*

\* This celebrated Tract, little as it is in bulk, hath still *less* of truth and justice in its positions and conclusions; so that, after paying all due respect to *his singular wit and humour* of the writer, we must necessarily deem it as *superficial and groundless* as it is *short*! but it is nevertheless rendered important and considerable, by the great circulation and public notice with which it hath been honoured: for, though the author did not think proper to prefix *his name*, the booksellers, it seems, have made no secret of it, and the work has been industriously retailed by piece-meal in the news papers, and has, therein, been publicly attributed to a certain factious old gentleman of rank and consequence in the polite world, and also of considerable celebrity as a writer; by which circumstances, we may easily account for the extraordinary ready sale and circulation of such a work.



plan, which this author *ironically* declares, he "*preferstoalltherest,*" viz. "*that of giving a right of voting universally together with annual elections.*" This is the plan, which, he says, "*appears to be the most uniform, consistent, and effectual:*" but then he quaintly adds, "*it has, indeed, one capital defect, which is, that it is absolutely and utterly impracticable, &c.*"

Now, if this was as *true* as it is *witty*, the state of the nation would indeed be desperate! for, if the "*most effectual*" plan of reformation was really *impracticable*, any attempt whatever to correct the enormous *inequality*, or *in-equity*, of the national representation, and its consequent *ruinous venality* and manifold *destructive corruptions*, would indeed be hopeless! and we should, of course, be obliged to embrace this author's forlorn and *disloyal* doctrine, (in p. 17.) which  
may

may truly be said to express the scope and drift of all his arguments ; because they are, for the most part, *deistically*\* founded,

U ed,

\* In a well-intended work of the same celebrated author, wherein *Deistical* notions ought not to have appeared without their antidote, we may find several very heterodox and dangerous positions, stated as the remarks of " *some speculative and refined observers,*" viz. that to such persons " *it has appeared incredible,*" (say he,) " *that a wise and benevolent Creator should have constituted a world upon one plan, and a religion for it on another ;*" &c. &c. (p. 133.) 2dly, That " *the love of power, riches, honour, and fame, are the great incentives to generous and magnanimous actions ; yet by this institution*" (meaning the christian religion) " *are all these depreciated and discouraged.*" (p. 134.) 3dly, That " *government is essential to the nature of man, and CANNOT be managed without certain degrees of VIOLENCE, CORRUPTION and IMPOSITION, yet are all these strictly forbid.*" (ibid.) 4thly, That " *nations CANNOT subsist without wars, nor wars be carried on without rapine, desolation, and murder ; yet are these prohibited under the severest threats,*" (p. 134 and 135.) 5thly, That " *the non-resistance of evil must subject individuals to continual oppressions, leave nations a defenceless prey to their enemies ; yet is this recommended.*" &c. &c. &c. And at last, he renders himself answerable for these pernicious and contradictory positions, by indiscriminately adopting them all, and making them his own, saying, " *To all this I answer, that such indeed*"

" is

ed, not only on the like false idea of the universal and irremediable existence and pre-

*“ is the Christian Revelation, though some of its advocates  
 “ may, perhaps, be unwilling to own it, and such”* (says he)  
*“ it is constantly declared to be by him who gave it, as well  
 “ as by those who published it under his immediate direction :”*  
 But, happily for mankind and the honour of our holy religion, the texts, which he has cited to justify his assertion, contain nothing that can possibly afford the least sanction to any such doctrines and contradictions. That world, which our Saviour spoke of as being in opposition to him and his, could not mean the world constituted upon the plan of the Creator, but only the wickedness of worldly men, such as the apostle Paul has particularly described in his second epistle to Timothy, (ch. iii. v. 2-9.)  
*“ Lovers of their own-selves, covetous, boasters, proud,  
 “ &c. &c. &c.”* *“ Lovers of pleasures more than lovers of  
 “ God; having a FORM OF GODLINESS, BUT DENY-  
 “ ING THE POWER THEREOF; from such”* (said the apostle) *“turn away ;”* manifestly giving the very same advice, which appears in one of the texts cited by this writer; *“ Be not conformed to this world,”* \* i. e. to the manners and unprofitable pursuits of such worldly men as I have described in the words of the apostle; for of such is surely formed that *“ world which is at enmity with  
 “ God,”* mentioned in another of the texts cited, by him, from the apostle James. Nay, that † *“ wisdom of the  
 “ world which is at enmity with God”* cannot be illustrated by more flagrant examples than these very positions, which our author has unguardedly adopted from *“ some speculative and refined observers,”* and more especially

\* Rom. xii. 2.

† 1 Cor. ii. 6. Jam. iv. 4.

prevalence of *wrong* in this world, but also (which is still worse) on the same

U 2

ima-

cially the third, that "government cannot be managed without violence, corruption, and imposition," which I propose more particularly to examine, because it is a political doctrine too generally adopted by *placemen* and *pensioners*, and which is manifestly the very principle or essential spirit which pervaded, and has notoriously influenced, every page of our author's "*Thoughts on a Parliamentary Reform!*" His first position is materially connected with the *third*, and will, of course, fall under the same examination. With respect to his *second* position, I shall briefly remark, that, though "*the love of power, riches, honour, and fame, are,*" indeed most commonly "*the great incitements to generous and magnanimous actions,*" yet, for the honour of human nature, these are not to be deemed the *only* incitements, because the most "*generous*" and the most "*magnanimous actions*" have much more noble incitements than he has conceived, viz. the *love of God*, and the *natural love of justice and right*; so that his position proves nothing against the merit of actions that are *truly* and *perfectly generous*. And, besides these worthy incitements, the agency, or influence, of GOD'S HOLY SPIRIT is also to be deemed an incitement to generous and magnanimous actions; nay, it is certainly the highest incitement, or the *supreme principle of action in man*, by which all christians ought to be influenced, and most certainly may be so, if they do not neglect the promised means! This, I trust, is amply proved in my tract on *the Law of Nature*, &c.

The

imaginary NECESSITY of yielding to that wrong, for the maintainance of government;

The *fourth* and *fifth* positions are grounded on a strange misunderstanding of the true doctrine concerning *non-resistance*; for though, we are, indeed, required to forgive *personal injuries*, and to submit to them with christian meekness, when any one of *ourselves* is individually the sufferer, nevertheless we are, most certainly, bound in christian duty to *resist evil and injury* whenever the *persons, or property, of other men* are in danger; and to defend *each other* from all unjust violence and rapine, whenever it is in our power to do so; and that even at the risk of our lives, which I have fully stated in my tracts on *Crown Law and Passive Obedience*. And, if individuals may, legally, and consistently with their duty as christians, *resist evil* in defence of *each other*, surely a whole christian community, or *nation*, may, most conscientiously, be allowed, in their united legislative or executive capacity, a power of *defending the innocent*, and of *resisting evil and oppression*: for this is the true foundation of all *just wars*, which, certainly, in the necessary defence of a *nation*, may be carried on without the guilt of *rapine and murder*; since, even between *individuals*, the *inevitable killing* of an adversary, in the necessary defence of a man's own person, is clearly *justifiable in law*, as well as in *reason*, which is the *eternal law of God*. And *national justice* in many cases, is unquestionably required to *resist evil*, even unto *blood!* The blood of the murderer (i. e. of the *voluntary killer of a MAN*) is absolutely required to be shed by *MAN*, ("by man shall his blood be shed," Gen. ix. 6.) and a moral

ment; i. e. the delusive and baneful doctrine of a **NECESSITY** to “do evil,  
“that

moral reason is elsewhere assigned for this retaliation by man, viz. “for blood is defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.” (Num. xxxv. 33.) And this, surely, is a *resistance to evil*, a retaliation of *violence in kind* even to the utmost extremity of *violence*,—to death! This, however, must be understood only of *judicial acts* of retaliation, duly limited in all their circumstances by the established laws of the *community*, or nation, which inhabits *the land where the blood is shed*; but, under such due restriction, the retaliation of *blood for blood* is so far from being forbid, that the land, it is manifest, cannot be *cleansed* without it. The indiscriminate doctrine, therefore, of *non-resistance*, as stated in these two positions, has no foundation in scripture, nor indeed any where else, except in the *misunderstanding* and *inaccuracy* of these *speculative* and *refined observers*!

I may now return to the consideration of his third position, that “government is essential to the nature of man, and CANNOT be managed without certain degrees of VIOLENCE, CORRUPTION, and IMPOSITION, yet all these are strictly forbid.” The first part of this sentence, as well as the last, must certainly be admitted as unquestionable *truths*; but if the middle part of the proposition were equally *true*; viz. that government “CANNOT be managed without violence, imposition,” &c. it would follow, of course, that the *necessity of the case* must regularly supersede all that is so “*strictly forbid*” concerning it! and then, indeed, these “*speculative*

“that good may come,” the common received notion of *Deistical* time-servers, who

“*cautious and refined observers*” would have a better foundation for their impious insinuation, that the *Creator* hath “constituted a world upon one plan, and a religion for it on another?” Nay, I have frequently heard these very principles avowed in conversation, by some other such “*friends to good government*” as our author, in terms to the following effect. “*That public business cannot be carried on without BRIBERY and CORRUPTION: that the measures of administration are indispensably NECESSARY to maintain due subordination and GOOD GOVERNMENT, and must not, therefore, be impeded by unseasonable negatives of parliament; so that POLITICAL NECESSITY will sufficiently justify the statesman in exerting all possible influence to obtain a majority at any rate.*” Thus the plea of NECESSITY is introduced to palliate and excuse, nay, even to justify and establish, the most flagrant enormities! as if *iniquity* was become an essential principle of government, so authorized and established by the sanction of *general usage*, that every attempt to correct it must be deemed an *innovation to the constitution!*

In no other point of view can be understood the fallacious and groundless charge of INNOVATION which has regularly been opposed to *parliamentary reform*, by men of a certain description, whenever it hath been proposed. With these *latitudinarians in principle*, all distinctions between *right* and *wrong* must be measured by *political expediency*, because government, according to them, “cannot be managed without certain degrees of violence, corruption,

who will not admit the true comfortable  
doctrine of God's immediate direction and  
providence

"*corruption, and imposition!*" Thus the celebrated writer hath very honestly stated the *ruling maxim* of that *venal majority* with whom he always *voted and associated*. And, as these "*speculative and refined observers*" have carried this wretched system of *political necessity and expediency* to the utmost extent that it was capable of, I have need only to cite their own *woeful experience*, as a most striking and undeniable example of its absurdity!

THE INIQUITY of these acknowledged means of "*managing government,*" viz. "*violence, corruption, and imposition,*" added to the MISCARRIAGES which such worthy *ministerial accomplishments* have of late years notoriously occasioned; would form too heavy a burden for one broad back! I speak, therefore, of the large *governing majority*, in the aggregate, and shall not be tempted to particularize, unless any of them should still persist in soliciting and inviting, as it were, the national justice against themselves, for their former misconduct when in power, by any farther unreasonable and *provoking* opposition to the necessary reformation.

Under the baneful auspices of these justifying Majorities and their *Managers*, the Patrons and Friends of this writer, (with the sanction also of his own *steady vote*, in all their measures,) the most disgraceful and pernicious excess, of "*violence, corruption, and imposition,*" has been tried and pushed to the utmost exertions of the national strength and resources; and at an expence of blood and treasure, far beyond all example of former times!

And



providence over all his works, and consequently cannot form any idea of the NECESSITY

And yet the detestable *experiment* has notoriously failed in almost every circumstance proposed to be effected by it, and, instead of *raising a revenue*, to gratify and ease "the country gentlemen," has sunk the national resources in a hopeless gulph of debt, the very interest of which is an annual expence of more than the value of an empire! i. e. a revenue, by the rule of *inverse*, against the state, like the "negative quantity" of the algebraists, "less than nothing," a "minus" of eight millions per annum, at least, besides a most disgraceful dismemberment of the British empire! So much for the EXPERIENCE of the "speculative and refined observers."

There are many maxims, indeed, which seem to favour the plea of necessity, as (1.) "NECESSITY has no law." (2.) "Necessity makes lawful what, otherwise, is not lawful." (3.) "The safety of the people" (which even bad ministers will pretend to regard) "is the supreme law." (4.) "Necessity binds the law." (5.) "Necessity severs the bands of law." (6.) "Nothing is more JUST than that which is NECESSARY," &c. &c.

But the man, who has not sufficient discrimination to assign the due legal limits to these doctrines of necessity, is certainly unworthy to be trusted either in law or politics. For the common law of England requires the accomplished

(1.) "Necessitas non habet legem." (2.) "Necessitas facit licitum quod alias non est licitum." (3.) "Salus populi suprema est lex." (4.) "Necessitas vincit legem." (5.) "Necessitas legum vincula irridet." (6.) "Nihil magis justum est, quam quod necessarium est," &c. &c.

CESSITY of doing right, and of being strictly just on all occasions, exceeds every

other

X

other

accomplished lawyer, or politician, to be also a christian, and cannot, therefore, excuse the too fashionable doctrine of the vulgar great, that a state necessity is not limited by the common rules of honesty and morality.

The maxims in question, therefore, manifestly relate only to such laws as are made to remedy inconveniences not in themselves evil, *in re mala prohibita*; but cannot authorize any thing that is *malum in se*; for that would be REBELLION AGAINST GOD, which no case can justify\*. For, of those, who say "Let us do evil, that good may come," the scripture has added, "whose damnation is just," (Rom. iii. 8.) and therefore, "multis est unum mala pati quam malo consentire †," is an established maxim of right, (3 Inst. 23.) insomuch that a king cannot legally dispense with "malum in se," nor can all the omnipotence of parliament establish it by statute; because, by the renovating principles of the common law, any such statute must be deemed null and void in itself, a mere corruptela, and no statute, as I have elsewhere amply proved. And, as iniquity, or "malum in se," is never lawful, neither is it ever NECESSARY; but, on the contrary, impolitic, and hurtful, even to a proverb ‡, as it commonly "renders bad worse!" this

is

\* See the protest of a private person against every suspension of law, &c. p. 25 to 44.

† "It is better to endure ALL adversities, than consent to ONE evil measure."

‡ "He that soweth iniquity shall reap vanity and the rod of his anger shall fall." Prov. xxii. 8.

either *necessity*, and removes all difficulty from the soundest and best policy in the government

is the ordinary effect of wicked policy, (so amply demonstrated in the *experience* of the celebrated author's *political friends*;) so that even the powerful plea of *necessity* cannot justify such *expedients*, nor excuse the *dishonesty* and *treacherous conspiracy* of those who practise them! because the *immorality* of such evil policy, whether attended with success or not, is always *certain* and *humiliating*; for the *worldly politician*, (who strives to *parry off evil by evil*;) from being, perhaps, simply *unfortunate*, renders himself *base*, *miscreant*, and *dishonourable*\*. These (with due deference to "*the speculative and refined observers*") are the additions or epithets due to *immorality* whenever it is active; but this is not all, even if the *wicked policy* seems at any time to be successful, if it ever assists in warding off a *temporary misfortune*; yet it only transfers the merited suffering from *this world* to the next, by rendering the mere *worldly politician* obnoxious to *eternal judgement*! which is certainly due to every one that shews himself more afraid of *man* than of his *Creator*!—more a passive subject under "*the prince of this world*," (which is the *devil* himself, the "*mammon of unrighteousness*,") than a free citizen of

\* In a prophetic description of an *abandoned man*, (see Psalm xxxvi.) it is declared, as a part of such a character, that "*he hath not abominated xvrt.*" דמד' נל' ער. What then shall we say of those wretched *time-servers*, who not only *vote* for every *evil measure*, and oppose every *good one*, (see *Thoughts on a Parliamentary Reform*;) but even promote and inculcate *evil* by *precept* and regular *principles*, (see the detestable false doctrines of *Political Necessity*—already cited.) The *not-bating evil* soon draws after it the whole character of *reprobacy*!

government of states and kingdoms;—

“*fiat justitia, ruat cælum.*” This gen-

X 2

tleman's

*the kingdom of God!* For the indispensable duty of the latter is “*righteousness on all occasions*” ; this only is *honourable*, this only is *politic* : because “*whosoever doth not RIGHTEOUSNESS is not of God.*” (1 John. 3. 10) And the same just principle is equally indispensable in the duty of every *free citizen of the kingdom of England*, by all the infallible foundations of our common law ; to which the propositions of “*the speculative and refined observers*” are utterly repugnant ! How then shall we reconcile them ? Must the very *foundations* of our law and national policy be torn up, to make room for a tottering fabric of INIQUITY, frightfully reared and suspended upon the rotten prop of an imaginary NECESSITY ! No, let us rather examine whether the proposition be true on which this supposed *necessity* is built ? *viz.* that “*government cannot be managed without certain degrees of violence, corruption, and imposition* !” or whether, on the contrary, this detestable union of three diabolical principles ; “*violence, corruption, and imposition,*” is not itself the most obvious efficient cause of all the *necessities*

\* בְּכָל עֵת, literally, “*in every time,*” or “*at all times,*” for there can be *no time*, when *righteousness* and *true judgement* are not to be maintained, so that there never can be a *necessity* to dispense with them, or suspend them : “*Blessed are the keepers (or maintainers) of judgement,*” (משפטים, i. e. true legal judgement, without respect of persons, of which the constitutional term in England is “*the due process of the law,*” and “*blessed also is he that doth RIGHTEOUSNESS AT ALL TIMES,*” (Psal. cvi. 3.) This is an unquestionable AXIOM of the *eternal law* of God, and consequently must be received as one of the *infallible maxims, or foundations, of the common law of England.*

tleman's abilities as a writer, his ready wit,  
and smooth agreeable stile, insure a  
ready

*cessities* and *misfortunes* of every government? and which, if not speedily reformed in our own, must inevitably produce a total subversion of the state and kingdom?

Search the histories of all preceding nations that are either entirely lost and overwhelmed with calamity and misery, or else still unhappily continue upon earth, a contracted memorial of their once flourishing ancestry, in a wretched existence of *political slavery*, subjected to the despotic will, caprice, and misgovernment, of arbitrary tyrants, and see if a single instance can be found among them of any nation being thus deplorably reduced, till these baneful seeds of destruction, "*violence, corruption, and impiety,*" (planted and watered by the "*refined observations*" of such "*speculative*" writers, as the author of "*Thoughts on a Parliamentary Reform!*" &c.) had taken deep root, had sprouted, grown up, and flourished, (under their fostering hands,) till they were ripe for such a harvest! and yet these *refined observers* would have us believe, that the Creator hath "*constituted a world upon one plan, and a religion for it on another,*" (p. 133.) as if there was no DIVINE PROVIDENCE in this world to favour and encourage just men and just measures! or as if "*God's ways were not equal,*" which, it seems, was an erroneous conception also of the backsliding people of Israel. "*Yet, saith the house of Israel, The way of the Lord is not equal. O HOUSE OF ISRAEL, ARE NOT MY WAYS EQUAL? are not your ways unequal? Therefore will I judge you, O house of Israel, every one ACCORDING TO HIS WAYS, saith the Lord,*"

" God,

ready reception of his sarcasms even  
against the most interesting and serious  
truths,

“*God. Repent, and turn yourselves from all your transgressions; so INIQUITY SHALL NOT BE YOUR RUIN,*” &c. (Ezek. xviii. 29, 30.) By the *ruin* here spoken of, as occasioned by *iniquity*, is to be understood a *temporal ruin*, to be brought upon their nation, on account of the “*violence, corruption, and imposition,*” and other iniquities, with which their political “*government*” was unhappily “*managed.*” This sense is rendered obvious by the preceding chapter, as well as by several which follow it; and particularly, in the 22d chapter, these three baneful *iniquities* are plainly pointed out, as principally concurring to effect the then approaching destruction of Jerusalem! And first, with respect to “*VIOLENCE.*” “*Behold, (said the prophet,) the princes of Israel, every one were in thee to their power to shed blood.*” And again, “*—in the midst of thee have they DEALT BY OPPRESSION with the stranger: in thee have they vexed the fatherless and widow.*” And, with respect to their *IMPOSITION* and *DECEIT*, “*In thee (said the prophet) are men which CARRY TALES to shed blood;*” and, with respect to their *CORRUPTION* and *BRIBERY*, “*In thee (said the prophet) have they TAKEN GIFTS to shed blood!*” And these, with other crimes, are expressly declared to be the true causes of their political failure, and national disgrace; “*behold, therefore,*” (said the prophet, in the name and power of him who sent him,) “*I have smitten mine hand at thy dishonest gain which thou hast made, and at thy blood which hath been in the midst of thee. Can thine heart endure,*” (or be firm,) “*or can thy hands be strong, in the days that*”  
“*I shall*

truths, I mean, with careless, superficial readers, who delight more in wit, or  
in

"I shall deal with thee? I, THE LORD" (JHO-  
"VAN,) "have spoken (it) and will do" (it.) And then follows the denunciation of vengeance, the usual effect of such "management" in politics! "And I will scatter thee among the heathen, (or nations,) and disperse thee in the countries, and will consume thy filthiness out of thee." (Ezek. xxii. 6-15.) These are clearly temporal judgments;—the expulsion of a whole nation from their native country, and their dispersion as vagabonds amongst their enemies, for their wicked policy in having "managed" their government with "violence, imposition, and corruption!"

In the 33d chapter, also, the prophet again repeatedly reproves their impious supposition of an inequality in the ways of the Creator, which appears to have been essentially the same with the *Deistical* proposition of our "refined observers," about "a world upon one plan, and a religion for it on another." See verses 17 to 29. "Ye the children of thy people say, The way of the Lord is not equal: but as for them," (said the prophet speaking of the "speculative refined observers" of that day,) "their way is not equal. When the RIGHTEOUS turneth from his RIGHTEOUSNESS, and committeth INIQUITY," (whether in "violence, imposition, or corruption," or as a literary advocate for all three!) "he shall even die thereby. But, if the wicked turn from his wickedness, and do that which is LAWFUL and RIGHT, he shall LIVE THEREBY. Yet, ye say, the way of the Lord is not equal. O ye house of Israel, I will judge you every one after his ways." And a little farther, in the same chapter, the prophet

in elegant expression, than in real information. But, with men of common sense, and

is charged with a solemn appeal to them, concerning the *improbability* of their being permitted to continue in possession of their country, if they continued their detestable practices of violence, &c. in direct opposition to the plan, religion, and laws, of the Creator! "Wherefore say ye unto them, thus saith the LORD GOD; Ye eat with the blood, (a practice expressly forbid under the patriarchal and Christian, as well as the Mosaic, dispensations,) and lift up your eyes toward your idols \* and shed blood: and SHALL YE POSSESS THE LAND? Ye stand upon your sword," (i. e. they trusted in their standing armies, the power of the staff, and the source of all their criminal VIOLENCE,) "ye work abomination," (which includes every species of CORRUPTION and immorality,) "and ye defile every one his neighbour's wife †; and SHALL YE POSSESS THE LAND?" and then follows God's vindication of his PROVIDENCE, in an awful denunciation of a sure temporal vengeance for such enormities † "Say thou thus unto them, Thus saith the LORD GOD, (as) I live, surely they that are in the wastes shall fall by the sword, and him that is in the open field will I give to the beasts to be devoured, and they that be in the forts and in the caves shall die of the pestilence. For

\* I WIT U.

\* This is a charge of criminality which cannot be evaded by those who pray before images, on the delusive pretence of assisting their devotion: for, though their prayers may be addressed to the prototype, yet they are certainly guilty of *lifting up their eyes toward their idols!*

† Thus private vices also hasten public calamities, and national disinheri- tance; and should, therefore, be strictly presented and suppressed, by censures and amerciaments, in the courts of the congregation, this only effectual means of restraining immorality!



and common *honesty*, it may be deemed a sufficient answer to this gentleman's *fopistry*,

" I WILL LAY THE LAND MOST DESOLATE, and the  
 " *pomp of her strength shall cease; and the mountains of*  
 " *Israel shall be desolate, that none shall pass through. Then*  
 " *shall they know that I am the Lord, when I have laid*  
 " *the LAND most desolate. BECAUSE of all their abominations*  
 " *which they have committed.*" It is manifest, there-  
 fore, that the Creator hath NOT " *constituted a world*  
 " *upon one plan, and a religion for it on another,*" but,  
 as " *his ways are equal,*" doth indispensably require all  
 men who profess *his religion*, as well rulers as subjects,  
 to conduct themselves in all things according to the  
 plan of that religion, which is *righteousness*. For " *the*  
 " *Prince of peace,*" our leader and instructor, is also " *the*  
 " *King of righteousness;*" and, accordingly, the *only plan*  
 of government, which christians can hope to maintain in  
 this world with prosperity and success, must be that of  
 " *righteousness;* for " *RIGHTOUSNESS exalteth a nation,*"  
 " *but SIN is a reproach to any people.*" (Prov. xiv. 34.)  
 The throne is established by *righteousness*, (Prov. xvi. 12.)  
 See also the noble maxim of *eternal law*, in Psalm xxxvii.  
 37. וְשָׁמַר אֱמֻנָה וְהָאֵלֹהִים אֵת בְּנֵי אֲחֵרִית לְאִישׁ שְׁלוֹם which may  
 thus be rendered, " *preserve INTEGRITY, and regard*  
 " *RIGHT, for the after-effect to a man is peace.*" This is  
 the uniform doctrine of many other texts, which mani-  
 festly relate to the *management of temporal governments in*  
 this world\*, and therefore " *the world,*" or that part  
 of

\* The advice of the apostle Paul to the Philippians, (ch. i. v. 27.)  
 was manifestly intended to regulate their whole behaviour as a *christian*

sophistry, to remark, that, in proving too much, he has far overshot his mark.

1028

Y

and

of it, which is constituted upon a different plan, is not constituted by the Creator, neither can it have any part in him; but belongeth to that being alone, which “*deceiveth the nations,*” to their temporal, as well as their eternal destruction. “*That old serpent, called the devil and satan, which DECEIVETH THE WHOLE WORLD!*”

Rev. *Christian community, and not merely their duty as individuals.* “*Only let your CONVERSATION be as it becometh the gospel of Christ.*” This imperative verb, *πολιτευόμενοι*, in our letters, *politoumenoi*, rendered, “*let your conversation be,*” included the political duty of the Philippians, in all their public transactions and arrangements for the government of their community, as well as the duty of individuals; and the maintaining such becoming conversation, in all our dealings, public or private, as may be suitable to our religious profession, is not only a rule of christianity but also of the old law. *Right*, either in the practice of the courts of judgement, or in politics, was never to be set aside. Nay, not only *right*, but *right right*, i. e. *perfect right*, or, as it is rendered in our common version, “*that which is altogether just shalt thou follow.*” And the reason for that excellent rule is not less binding upon Englishmen at this day than it ought to have been upon the Israelites, to whom it was originally declared, viz. “*that thou mayest live and inherit thy land.*” A reason, surely, which ought to urge all temporal governments into a strict observance of “*right right*,” of invariable *righteousness* and *honesty* in all their measures. See Deut. xvi. 20. “*That which is altogether just*” (דקך דקך, or RIGHT RIGHT) “*shalt thou follow, that thou mayest live and inherit the land which the Lord thy God giveth thee.*” Therefore, even in worldly policy as well as in future judgement, the old English proverb is irrefragable, “*Honesty is always the best policy.*”

\* For, “*what fellowship is there between RIGHTeousness and ILLEGALITY? (ἀνομία) and what communion to LIGHT with DARKNESS? and what concord to Christ with Belial?*” 2 Cor. vi. 14.

that has yet been proposed for lessening the corruptions of *parliament*, hold equally

currence related in scripture most certainly is both *important* and *necessary*, in some respect or other, whether we have sagacity to discover it or not; because the same authority assures us, that "ALL SCRIPTURE (is) given by *inspiration of God, and IS PROFITABLE for DOCTRINE, for REPROOF, for CORRECTION, for INSTRUCTION in righteousness,*" &c. 2 Tim. iii. 16.

Happily the celebrated writer, it seems, has "no doubt," of "*these facts,*" for otherwise "*the belief*" of them, he must allow, "*is necessary,*" if it is but for *one plain reason*, viz. that they are related in the holy scriptures: but whenever the occurrences, mentioned in scripture are related in any other way, in any way, I mean, that is *contrary to, or unsupported by, the scripture-account of them*, (like the celebrated author's *own way of relating the occurrences in question*.) then, indeed, as he says, "*the belief of these facts,*" when SO RELATED, "*makes no part of christianity!*" When this gentleman, for instance, remarks concerning "*the truth of them,*" that "*it proves, only, that this apostle could not, in common life, be under the perpetual influence of infallible inspiration,*" (a point which requires no proof or dispute at all,) he immediately subjoins, by way of illustration, a state of circumstances which is utterly discordant with the scripture-account of "*these facts,*" saying, "*for, had he been so,*" (i. e. under the influence of inspiration,) "*he would not have put to sea before a storm, nor forgot his stow.*" But the celebrated author himself had "*forgot,*" (it seems,) that the apostle was a prisoner

qually good against *having any parliament at all!* and when we find that this apparent

prisoner at that time, and could not avoid being "put to sea," so that this circumstance *proves* nothing at all to the purpose of his argument; and he has "forgot," likewise, another circumstance which is still more unlucky for his assertion, viz. that the holy scripture has expressly informed us, that the apostle *actually foretold the danger of the voyage*, and has thereby given us ample proof of his being under "the influence of infalible inspiration," at the very time, and in the very fact, which the celebrated writer has ingeniously cited as a proof to the contrary! (See Acts xxvii. 10.) The occurrence is, therefore, so far from being of "no importance at all," that it is, perhaps, the *most important* of any in the whole history of that apostle! if we except his conversion; because the actual attention of *divine providence* towards just and righteous men is exemplified (for the comfort of all persons that are truly religious) in this eminent instance of God's regard to the person of Paul, in giving him such *foreknowledge for his preservation*. And the other circumstances of the shipwreck are also *highly important* in many other respects; for, though the ship was really lost, *agreeable to the apostle's prediction*, yet God afterwards *gave to Paul the lives of all that sailed with him*, whereby he was authorized to assure them of safety, even when they were at the utmost extremity of danger, saying, "there shall not a hair fall from the head of any of you," though there were 276 souls on-board! so that the celebrated writer has, indeed, picked out a *most important occurrence* to serve him

rent tendency of his arguments is not only a necessary conclusion to be drawn from

him as a sample of those which he supposes "of no importance at all!" and, as to the other *supposed* occurrence, (viz. that the apostle had "forget his cloak,") it has not the least foundation in holy scripture, or elsewhere, that I know of, except in the lively imagination of this agreeable *writer*, in order to give a quaint and facetious turn to the end of one of his sentences, which is an object of more importance, it seems, with some fashionable authors, than *truth* itself! That the apostle LEFT *his cloak in Troas*, (*ὁ ἀπίκλον ἐς Τρωαδὶ παρὰ Κάρπυ, which, "I LEFT,"* says he, "in Troas with Karpus," 2 Tim. iv. 13.) and, probably, *his books* also, is not to be disputed; but we have no warrant to suppose that he "FOR-GOT" either cloak or books, unless we may be allowed to confound all due discrimination of words and their separate senses for the sake of a *bon-mot*. And even this circumstance of the apostle's having "left his cloak and his parchments at Troas" (immaterial as it may seem at first sight) is not to be esteemed "of no importance at all;" for this teaches us that the apostle "though under a WATCHFUL PROVIDENCE) found it necessary to provide against such natural infirmities as it is committed to the guardianship of human care to fence against; and, though he was instructed with an abundance of revelations," (yet) "that did not supersede the necessity and use of books, for such improvement in knowledge as was within the power of human industry." (See Mr. Ridley's Sermon preached before the hon. Trustees for establishing the Colony of Georgia, and the Associates of Dr. Bray, in 1746, p. 15.)

These

from thence, (exactly what an opponent would wish to fix upon him,) but, also, that it is a conclusion expressly acknowledged, even in his own words, (see p. 17. that “*those, who cannot make shif*  
*“ with such a parliament, must have none.”*  
 &c.) we may fairly suppose, that he is not more serious in this than in most of his other positions, and, of course, that “*the schemes presented to the public by real*  
*“ and pretended patriots, that is,”* (as he says,) “*by those who have more honesty*  
*“ than sense, and those who have more*  
*“ sense*

These occurrences, therefore, I hope, will at length prove both “*important*” and “*profitable*” even to the celebrated writer himself; because a careful review of them, as related in *scripture*, must convince him that he has been too hastily and superficial in his citations; whereby he himself stands as much in need of “*reproof*” as his celebrated writings do of “*correction*;” so that his good sense, I hope, will incline him to profit by the “*instruction*” which necessarily arises from these two *humiliating* circumstances: and, if ever he should conceive that I may be able to assist his farther *improvement* by the removal of any apprehended difficulties, he may assuredly command my best endeavours.

"*stus et sua honesty*," are not the only subjects of this subtle writer's irony; but that he meant equally to ridicule the whole pack of their yelping opponents, even his staunch old friends, the pensioned advocates for corruption and "good government," (as they are pleased to call it,) by setting them full cry upon false scents of untenable arguments!

But, if I am deceived in attributing to him a deeper "*sense*," and more "*honesty*" at bottom, than, perhaps, he is willing to acknowledge, yet I should be sorry to fall into the contrary extreme of imputing to him any degree of that unhappy disproportion between "*sense*" and "*honesty*" which he himself, without the least scruple, so quaintly and facetiously imputes to every other person that has written upon the subject! Common charity, therefore, obliges me to give him credit, at least, for the *honesty* of meaning well, howsoever

ever

ever wide his arguments may be from  
 truth and loyalty; and, as to his *sense*, I  
 have never presumed to question it, but  
 only the *use*, or rather the *abuse*, he has  
 made of it; for, after all, my hopes of  
 being pardoned, for the freedom of these  
 remarks, must rely on his *good sense*, and  
 I sincerely desire to experience so notable  
 an instance of it, though I am far from  
 expecting the farther satisfaction of re-  
 ceiving his thanks for my labour and pains  
 in searching and proposing an *essential* re-  
 medy to the *one capital defect* of his  
 most eligible plan of reformation, because  
 a removal of this *defect* (in his opinion,  
 it seems) would deprive the *favoured*  
 plan of *its chief excellence*, viz. its sup-  
 posed *impracticability*, an excellence, how-  
 ever, to be relished only by professed  
 enemies to reformation and order: To be  
 convinced of the IMPRACTICABILITY  
 of this scheme, (says he in p. 61.) " he





so that *elections* can be no longer free, whilst such *hypocritical menacing*, and open violence, is so generally tolerated! "Let *us*," also, "*figure so ourselves*" (for the horrible scenes have been too recently imprinted on our memories to be easily effaced) these suborned, "*multitudes of all descriptions*," and beyond all description, or of no description at all, as much "*inflamed by contest and intoxicated by liquor*" as they possibly could be, even if admitted to a "*right of voting*;" "*weavers from their looms, and miners from tinneries and coal-pits; sailors from their ships, and soldiers from their quarters; to whom we must add*," (as the celebrated author has done,) "*thousands of thieves, smugglers, rogues, vagabonds, and vagrants*;" and "*we must add*," also, select troops of Irish chairmen from the environs of the polite gaming-houses, and whole bands of jour-

ney-men butchers, the very kern and off-  
of all the rambles, brandishing their  
formidable cleavers! "I say, let us figure  
"to ourselves all these respectable" hinder-  
ers and obstructors of free election, "let  
"loose" not only for "one day," but for  
many days together, "throughout every  
"part of the kingdom, and such a scene of  
"confusion, of drunkenness and riot, of  
"rapine" and even of "murder!" &c.  
"will present itself" (by due recollection  
of very recent facts, more strongly than  
by mere imagination) "as must shock us,"  
indeed, "with horror," and ought, there-  
fore, to convince us, that we already ex-  
perience the most conformable mischiefs  
and inconveniencies that can possibly arise  
either from the multitude or the mean-  
ness of the persons that usually attend  
elections! What then must we think of  
the morality and patriotism of those persons,  
who regularly oppose every attempt to  
reform

reform these intolerable grievances and corruptions?

With respect to the *danger* which the celebrated author apprehends from all the rabble being "*let loose in one day throughout every part of the kingdom,*" it is a mere bugbear: are they not, at present, frequently "*let loose in one day throughout every part of the kingdom,*" even "*one day*" in every week? Nay, are they not at liberty *any day, or every day,* to be as "*loose,*" if they please, as those haughty persons who falsely esteem themselves so much their betters? and yet, perhaps, they are *not more licentious,* though certainly *much less guilty,* than their unprincipled CORRUPTORS, a great majority of "*the honourable gentlemen,*" as they call themselves, who solicit their favour at elections, to whom *all the mobs* and *all the mischiefs,* on those occasions, are chiefly to be attributed! for those

men

men who bribe, treat, lead, and excite, these disorderly *multitudes*, cannot surely be exempted, by their rank, titles, or fortunes, from being deemed a *part of the mob*, when they are notoriously the most *guilty and vicious part* of it, by being principals and movers of the rabble!

And such men should remember that the vile practice of *opening houses, for election purposes*, is a species of *bribery*, not only the most *pernicious* to the people and kingdom, but also the most *effectually degrading* to themselves; because they are thereby absolutely *incapacitated, in law*, to take their seats, (see note in p. 48.) and therefore all those persons, that may fairly be convicted of this most *pernicious* and *degrading* misdemeanour, ought most certainly (for the honour of the house) to be ejected! “*Let us also figure to ourselves*” the present inconvenient and hopeless method of *determining dis-*  
*puted*

puted and undue elections, and also the lamentable number of them, by which the precious time and attention of the great national council must be principally engrossed, to the manifest hindrance of national business: whereas in ancient times, when general elections throughout the kingdom were “every year once and more often if need be;” viz. previous to every session of parliament, though the sessions were held not only annually, but often twice, and sometimes three and four times in a year, yet “there were not above two or three cases of elections questioned, or complained of, for above 200 years!” (see “the Legal Means of Political Reformation, p. 32 and 55.) so that a restoration of our ancient parliamentary rights, and a due reformation of modern abuses and innovations, are unquestionably necessary to be demanded now that the exercise of our inestimable franchises are sunk down (through the

*enormous*

*enormous disproportion* of popular Representation) to the *very lowest degree* of possible existence; and that all our public circumstances are really tainted with the most *noxious corruption* imaginable exceeding any *superlative* of it that can either be expressed or even conceived! In short, there is but *one degree lower*, in *humiliation and baseness*, to which the nation can possibly descend! and that would be to adopt the wicked and *disloyal* position of this celebrated writer, viz: that “those who cannot make shift with such a parliament must have none.” For to be contented, like him, “to make shift with such a parliament” would certainly be the *lowest degree* of *parliamentary corruption*; for it cannot descend any lower, as I have already remarked, without actually losing its existence, and therefore the *one degree lower* would be to admit this gentleman’s baneful alternative, the  
*having*

having no parliament at all; which is certainly the lowest degree of POLITICAL SLAVERY!

The necessity, therefore, of "*a parliamentary reform*" is UNQUESTIONABLE, notwithstanding this celebrated writer's "*Thoughts*" to the contrary; and the practicability of it will be equally certain, if the constitutional remedy to the present national immorality and corruption is but previously applied, viz. a due re-establishment of the ancient view of FRANKPLEDGE, with all its just and legal usages and appendages; for this is the true *state-antiseptic* which will sicken the *worms of undue influence* and put an effectual stop to their baneful progress on the vitals of the English constitution; especially if some farther reasonable and very necessary heads of enquiry be added to the *articles of annual inquest*, which I have already stated in pages 112 to 132, and ought to be in-



serted after the 33d article, (“Of all manner of conspirators,”) leaving the article, there distinguished by the number 34, for the conclusion of the whole.

Item, (34.) Whether the “*Elections of members to parliament have been freely and indifferently made without charge or expence,*” as required by the laws of this kingdom? See 7 and 8 W. III. c. iv. A. D. 1695. and 2 Geo. II. c. 24. A. D. 1729. What person or persons have received *bribes* of any kind, or have *eaten or drunk* (the most pernicious participation of *bribery*) at the expence of others during the time of an *election*? The penalty of receiving any “*reward whatsoever*” on such occasions is 500l. besides an *incapacity* from ever voting again: see stat. 2 Geo. II. c. 24. And *meat and drink, entertainment or provision*, are expressly deemed articles of *reward* in the previous statute of king William. See note in p. 48.

35. What

35. What attorneys, or other persons, have been agents in distributing money, or other reward of any kind, or in promising reward or emolument during the time of an election?

36. What public houses have been *opened* (a term sufficiently understood by the notorious practice of it) for the purpose of influencing any election, after the teste of the writ, or after the place became vacant? and who hath paid (or hath undertaken to pay, and is, directly or indirectly, responsible) for the expences incurred by such public and unlawful entertainment? If the proofs on this head can be fairly traced, so as to criminate the *persons elected*, they are thereby effectually incapacitated from holding their unjustly-acquired seats in parliament, and by virtue of the above-mentioned statute of 7 and 8 William III. are “*to be deemed*”

“ and shall not act, sit, or have any vote  
 “ or place, &c. as if they had never been  
 “ returned or elected members for the par-  
 “ liament;” and the act does not limit  
 the conviction to any fixed period of time  
 after the offence; so that there is ample  
 leisure and opportunity for researches on  
 that head; which all true friends to the  
*honour and dignity of parliament* ought to  
 promote.

37. What publican or victualler hath  
 supplied “meat, drink, *entertainment*, or  
 “ *provision*,” during the time of an elec-  
 tion, to any person or persons whom they  
 might justly have suspected of not intend-  
 ing to pay for the same at their own cost  
 and charge? For, in this case, the publican  
 is as much a criminal agent in *bribery*, as  
 the petty-fogging attorney who *bribes*  
 with cash, notes, or promises, and is  
 equally liable to all the penalties of *bribery*.

38. And

38. And what person hath made any disbursements or expenditure whatsoever, either in his own behalf, or in trust for others, or even promise of expenditure, or repayment, directly or indirectly, to promote such dishonest and baneful practices against the peace and welfare of the community?

There is no doubt but that regular *annual* enquiries upon oath, in all parts of the kingdom, on these points, would put an effectual stop to the *expences* and *corruption* of elections, and consequently to the *tumults* and other *immoralities* of them, whereby the trite argument against the *constitutional frequency of elections* would, of course, be superseded; so that the ancient right of newly electing our representatives for *every session of parliament* might again be happily restored, without either *inconvenience* to the electors, or *expence* to the candidates.

And

And lastly, as the original intention of these legal divisions of the people into *sithings* and *hundreds* was obviously for *military*, as well as *civil*, purposes, some other additional articles of enquiry will also be necessary to re-establish and maintain the ancient *legal military duties* of the people in a regular **WATCH** and **WARD** throughout the kingdom, in order to prevent every species of *robbery*, *vias*, or other *violence* whatsoever, by internal enemies, as well as to be thoroughly prepared, without the enormous and ruinous expence which at present is thought necessary against the apprehension of invasions by foreign enemies.

That this was an ancient object of enquiry at *views of Frankpledge* is manifest, by the article which I cited from *Fleta*, in p. 138. n. viz. "*Item de vigiliis non observatis.*" "*Also concerning watches not duly observed.*"

That

That the ancient and true constitution of the English State, absolutely requires every man (the clergy and judges excepted) to have arms, and to be duly trained and exercised in the use of them, it has amply proved in my "*Treatise on the Means of National Defence*;" so that, from thence, it will be very easy to form such additional articles of enquiry as may be necessary to restore and preserve these two great national objects, the general arming and training of the people to military services, in WATCH and WARD; whereby the imaginary necessity of maintaining a numerous standing army in constant pay (the most dangerous and unconstitutional of all our modern innovations) will be effectually superseded, and, of course, a probable means and opportunity would thereby be laid open to a virtuous administration of government (a title that will most certainly be due to any administration that shall adopt and restore the just  
and

and free constitution of tithings and hundreds in their ancient legal purity) of crowning their success, in reformation, with an effectual reduction of the national debts and taxes, by means of the great annual savings that would arise from a proper gradual decrease\* of the duties of our present military establishments.

The

I say a gradual decrease, because I wish the reduction of our armies to be made without injury or any material inconvenience to the brave officers and men that have faithfully served therein, to whom are certainly due all the kindness and reasonable liberality that the nation can afford to shew them: and, though I am a professed enemy to STANDING ARMIES in general, yet, at the same time, I profess, and really entertain, a very cordial regard and benevolence to the deserving individuals, of which they are composed. The kind of reduction, therefore, which I wish to see, is such as they themselves, I believe, would not think either unjust or hard upon them: and yet, I trust, that the savings, arising from it, would be as effectual and speedy as those of any other plan that the nation can (with consistent honour and due liberality to the parties) adopt. Let us, therefore, suppose a reduction to be made by time rather than by the involuntary discharge of any one; and by putting an entire stop to recruiting, and to the granting of any new commissions, rather than by the stoppage of pay.

Let

The duties of *watch* and *ward*, or *guard*, were rendered light and easy, by

B B an

Let *discharges*, however, be *freely* granted to all that *request* them; and, let *liberal* bounties (in proportion to rank and pay) be given, to incite *such* requests; that industrious subaltern officers and men may be encouraged and enabled to engage themselves in *civil* occupations. A preference should also be given, in the disposal of lucrative *civil* employments under the crown, (in such employments, I mean, as are necessary to be continued) to deserving officers that are properly qualified for them, provided they give up their *military* commissions and professions; which would much hasten the reduction of the army and its expenses.

The corps of *Engineers* and the regiment of *Artillery*, however, are branches of the military establishment which cannot so safely be reduced, or, at least, not in so great a degree, as the other military corps, because they cannot so easily as other regiments be raised again, in case of any sudden want of them; a regular education being necessary for *engineers* and *artillery* officers in the study of mathematics, projectiles, mechanics, military architecture, surveying, drawing, &c. But a proper establishment in these two branches, (duly maintained in study and practice) would, in case of any sudden emergency, enable the *professional militia*, and the trained *hundreds* and *thousands*, or hosts of the people, in their *stations* of service, to oppose, with sufficient effect, any power (humanly speaking) that could possibly be brought against them. I have here supposed the *militia* to remain on its present establishment; for, though



an equal service of the whole body of the people "in rotation;" for which the modern term is "a roster of service." See "Leges Gulielmi Regis," as published in Lambard's *Archionomia*, (1st edit. 4to 1568. fol. 125.) Statuimus, &c. "We ordain that all the Cities, and Boroughs, and Castles, and Hundreds, and Wapentakes, of our whole kingdom aforesaid shall every night be watched and guarded "IN GYRUM" (i.e. into a circle, or rather

though I contend that the *hundreds* and *tithings*, when duly trained, form the true constitutional militia of this kingdom, yet, until that happy legal constitution can be so effectually re-established as to be deemed of itself sufficient for the national defence, I should be very unwilling to propose any alteration in the present establishment of militia for the country, except, indeed, some such obvious amendments as may render it less burdensome and tedious to poor labourers, by throwing a more adequate proportion of the expence upon those that can better afford it: and also to prevent any man from being detained from home (after he is duly disciplined) longer than a month (or six weeks at most) at any one time in actual service, lest he should thereby lose his civil occupation and become a mere soldier. See "*Treatise on the Means of National Defence by a Free Militia*," p. 47, 59, 66-68, 86, 87.

rather by "a ROTATION" viz. a roster of service) "against crimes and enemies, according as the sherifes, and aldermen, and magistrates, and our ministers, shall best provide, by common council, for the welfare of the kingdom." And a little farther he adds, "statuimus et firmiter præcipimus;" &c. "We ordain and strictly command that all earls, barons, knights, ministers," (servientes or serjeants,) "and ALL THE FREEMEN of our whole kingdom aforesaid," (universi liberi homines totius regni nostri prædicti,) shall have and hold themselves always well IN ARMS and horses, as it is fit and right, and that they may be always ready and prepared to fulfil their ENTIRE SERVICE TO US, and effectually to act whenever there shall be occasion, according to the duty which they ought to do of right (de jure) to us, for their lands and tenements, and according as we

“ *command them by the COMMON COUN-*  
 “ *CIL,*” (i. e. by the parliament) “ *of*  
 “ *the whole kingdom aforesaid.*” And this  
 ENTIRE SERVICE TO THE KING, thus  
 duly limited by the national COMMON  
 COUNCIL of the WHOLE KINGDOM, was  
 rendered still more suitable to the dignity  
 of a *free people*, by the ENTIRE ELECTION  
 also, among themselves, of all their of-  
 ficers; not only of the *titling-men* (who  
 had the *civil* power of *constables*, and the  
*military* authority of *serjeants*), and of the  
*bundreders* (who had the *civil* authority  
 of *high-constables* and *justiciaries*, and the  
*military* rank of *captains*) but also of the  
*viscounts* or *sheriffs*, and of the *heretochis*,  
 the commanders or leaders of the army;  
 “ DUCTORES EXERCITUS.” “ *The*  
 “ *same*” (says the learned judge Atkins \*)  
 “ *as*

\* See judge Atkins's “ *parliamentary and political*  
*tracts,*” p. 253, 254. “ *Sir Edw. Coke, in his 2d Inst.*”  
 (says judge Atkins,) “ *in his exposition of the statute of*  
 “ *Westminster,*

“ as in the dialect of this present age, may  
 “ be called the lord-lieutenants, or deputy-  
 “ lieutenants.” For this the learned  
 judge refers us to the law of K. Edward  
 above cited \*. This law also provides, in  
 terms

“ Westminster, 1 cap. 10. concerning the election of the  
 “ coroners by the freeholders (which ever was so, and  
 “ so still continues) says, there is the same reason for  
 “ election of sheriffs and so (says he) it anciently was by  
 “ writ directed to the coroners. In like manner” (con-  
 “ tinues judge Atkins) “ were the conservators of the peace  
 “ chosen, in whose place the justices of the peace now  
 “ succeed, and so the verdurers of the forest are to this  
 “ day. These were great and high liberties, and did  
 “ belong to the freeholders” (by which he must mean  
 the *liberi tenentes*, the free holders in burgage tenure, viz.  
 the *householders* or *Decensers*, as well as others) “ from  
 “ all antiquity, and are strong arguments to confirm  
 “ those late authors that will by no means allow of a  
 “ limited government, but leave us under an arbitrary  
 “ power, and who call our laws and liberties but the  
 “ concessions and condescensions from the regal and  
 “ absolute power.”

\* “ *Isti vero viri*” (speaking of the *HERETOCHEI*)  
 “ *eligebantur per commune concilium pro communi utilitate*  
 “ *regni, per provincias et patrias universas et per singulos*  
 “ *comitatus in PLENO FOLK MOTET, sicut et VICE-*  
 “ *CO-*

† This *full folk mote* for the election of *heretoches*, or *lord-lieutenants*,  
 and of the *sheriffs*, was ordered to be held every year in the beginning  
 of

terms equally strong, for the *general arming of the people*, as the act of K. William does

“COMITES provinciarum et comitatum ELIGI DEBENT.” “This law” (says the learned judge Atkins) “mentions this election as an use and custom.”

I must, however, remark, that this quotation is taken from that part of K. Edward's laws which is printed in *italics* in Mr. Lambard's edition, and which Mr. Prynne calls a “*spurious addition*,” and he cites a much higher authority (that of the learned Abp. Usher) for the same opinion. Mr. Lambard himself, however, informs us, that there were two different exemplars, the one “*per antiquum*,” “very ancient;” and “the other” (says he) “is not, indeed, so ancient; which, however, contains more” (“alterum non ita sanè vetus, quod tamen plura complectatur.”). And he informs us, that he himself, “after making a diligent comparison of them, had joined both together, in such a manner, however,” (says he,) “that the whole of the old exemplar is expressed in the LARGER letters,” (i. e. the Roman,) “but whatever is expressed in the LESSER characters” (the *Italics*) “is to be attributed (says he) to the LATER copy” (“quæ minoribus vero describuntur characteribus, ea recentiori sunt tribuenda.” But he does not express the least suspicion that the latter is *spurious*; and he was surely a very competent judge of that matter, as being one of the most

of October, by the same law. “Item aliud *folknote* esse debet in quo libet comitatu per provincias et patrias totius regni prædicti universas, scilicet in capite kl. Octob. ad providendum ibi quis erit vicecomes, et qui erit eorum heretochii, et ad audiendum ibi iuxta eorum præcepta concilio et assensu procerum et iudicio *folknote*,” &c.

does for "*the entire service of the king.*"  
 see "*cap. 35. de Greve.*" "**DEBENT**  
 "*enim*

most eminent antiquarians of his time. And the rev. Dr. David Wilkins, who printed an edition of the Anglo-Saxon Laws, in 1721, has set forth the laws of K. Edward, without distinguishing, by Roman and Italic letters, the various readings of the two eminent exemplars before-mentioned, (as Lambard and Whelock had done before him,) so that he manifestly thought it right to adopt the additions in *italics*, as properly belonging to the text (though rejected by Mr. Prynne,) or he would not thus have omitted the distinctions between the two exemplars. Whatever objections Abp. Usher might have had to some of the historical circumstances related in this exemplar of K. Edward's laws, (as, for instance, the correspondence between pope *Eutherius* and the British king *Liutus*, the extensive conquests of king *Arthur*, &c.) yet, as these circumstances were generally received for historical *facts* long before the fourth year of K. William I. (when these *Laws of Edward* were newly collected \* and

\* These laws were newly collected in the 4th year of K. William I. by a parliament *electa* and called together expressly for that purpose; and the manner of the representation was remarkable. Twelve representatives were elected for each county of the whole kingdom, and were sworn before the king (after the manner of a *jury*) that they would, to the best of their power, without departing either to the right or the left from the path of truth, declare their *laws* and *customs*, nothing omitting, nothing adding, nothing changing, by perjurication, &c. "*Post acquisitionem Angliæ, præfatus Rex Angliæ Gulielmus quarto anno regni sui, consilio Baronum suorum fecit*  
 "*summoniri per univesos Angliæ consulatus Anglos nobiles, sapientes,*  
 "*et*

“ *causa* UNIVERSI LIBERI HOMINES TO-  
 “ TIE REGNI, *iura facultates suas et*  
 “ *possessiones,*

and digested into the present form, as appears by the first article) the insertion of them into a manuscript, valleged to be of that age, cannot (even if they were false) afford any proof against the originality of the manuscript, because the writers of that age, in general, believed these circumstances to be *facts*, and might, therefore, with great probability, be supposed, to have inserted them.

And, as to Mr. Brynne's exception in his brief animadversions, &c. on the fourth part of the Institutes, &c. compiled by Sir Edw. Coke, p. 189.) it is manifestly founded on a mere *literal* error of the transcriber, of the M. S. which by no means injures the general credit of the copy, and its other contents; Mr. Brynne says, “ I cannot but take notice of one gross mistake in the “ *spurious* addition to the laws of K. Edward the confessor; in Mr. Lamberts, cited in the 2d Inst. p. 70. “ concerning the antiquity of the *forenote*, or *court* *lect*; “ and administering the oath of allegiance to the “ people; *ad defendendum regnum, &c. Hanc legem invenit ARTHURUS (qui quondam fuit inchyttissimus rex BRITONUM) et ita consolidavit et consederavit regnum BRITONUM*.”

“ TANNIE  
 “ et sua lege traditos, ut eorum leges, & jura; & consuetudines ad ipsos  
 “ audiret. *Etiam* igitur de singulis totius patrie comitatibus *et* *Ducal-*  
 “ *tem, jurjurando* coram rege *primam confirmaverunt*, ut quoad possent  
 “ recto tramite *incedentes, nec ad dextram nec ad sinistram* *diverterent*,  
 “ legum suarum & consuetudinum sanctis *patofacerent*, nihil *prater-*  
 “ mittentes, nil addentes, nil *prævaricando* mutantes. A legibus  
 “ igitur sancte matris ecclesie *sumentes* *exordium*, quosiam *per eam*  
 “ Rex & regnum *solidum* *subsistendi* *habet fundamentum*, leges; li-  
 “ bertates, & paces ipsius *concionati* sunt, dicentes.”

“ *possessiones, et juxta catalla sua, et secundum feodum suum, et secundum tenementa*

C c

“ *sua,*

“ TANNIÆ *universum semper in unum. Hujus legis AUTHORITY*” (meaning the authority or happy effect of free-folk-motes, or court-leets, i. e. the incomparable constitution of *Frankpledge*, which I now wish to recommend for the same purpose, viz. to *unite* the whole nation in one *confederated* body by a universal establishment of *the law which Arthur found*, with all its just and legal usages) “ *expulit ARTHURUS prædictus SARACENOS et inimicos a regno.* When, as it is most clear” (says Mr. Prynne) “ by Galfridus Monimathensis, Mat. Westminster, Radulfus Cestrensis, Ponticus Verminus, &c. An. Dom. 516 to 542; and other our ancient and modern historians, who write of king *Arthur*, record, that he *only* fought his several battles with the *Saxons*, Scots, Picts, whom he expelled out of the realm, but not with the SARACENS, who never infested nor entered our *Island*, nor mention any such oath, law, court, prescribed or held by him.” Now that K. ARTHUR fought with the *Saxons*, Scots, Picts, &c. must be readily allowed, and also that he fought not with the SARACENS; but if we consider the mention of “ SARACENOS” as a mere literary mistake of an ignorant transcriber for SCANIOS or SCANDIOS, (an ancient name, much less known to the vulgar at the time when this copy was wrote, than that of the SARACENS,) there will be no cause for farther cavil against the authenticity of the copy, because such a mistake in a copy ought not to injure the credit of the original compiler of the work. And that the word SCANIOS, or SCANDIOS,



“*sua, ARMA HABERE, et illa semper  
 “ prompta conservare ad tuitionem regni,”*  
 &c.

That

was really intended, is manifest from the context (two pages farther) wherein express mention is made of K. Arthur's conquest of *Scantia* and *Gutland*, the countries from whence proceeded the most of Arthur's enemies, even the Saxons themselves originally, (see *Sheringham de Anglorum Gentis Origine*;) if not the *Picts* also, the very nations mentioned by Mr. Prynæ himself, and also by all the authors to whom he has appealed.

There is just such another *mere literal* mistake, a few pages farther, which, without proper warning, might still farther induce a superficial reader to suspect the authenticity of the exemplar; I mean the passage where mention is made of the election of king Ina, viz, “*qui electus fuit in regem per ANGELOM,*” “*who was elected king through*” (or by means of) “*AN ANGEL,* (a very improbable circumstance,) instead of the obvious meaning of the original writer, i. e. “*per ANGLIAM*” “*throughout ENGLAND.*” For, this latter sense is clearly supported by the context immediately following, which relates, that “*Ina first obtained the monarchy of this whole KINGDOM,*” &c. “*et qui PRIMO obtinuit monarchiam TOTIUS REGNI HUIUS post adventum ANGLORUM in Brytanniam. PRIMUS enim fuit rex coronatus ANGLORUM ET BRYTONUM SIMUL MANENTUM IN BRITANNIA post adventum Saxonum,*” &c. And, a little farther the text relates that he obtained *Wales* and *Gwynwall* by his second wife, as also the consecrated British crown, which belonged to the last British king, Cadwallader; so that the circumstance mani-

festly

That "ALL FREE-MEN OF THE WHOLE  
 "kingdom, according to their means, &c.

C c 2

" OUGHT

feßly intended to be expressed was the general acknowledgement of IN A, as king over both the ENGLISH and the BRITONS, that is, "per Angliam," "throughout all Eng-  
 "land;" and not "per Angelum." Nevertheless these two palpable errors of transcribers have been copied in all the subsequent editions of K. Edward's laws, without the least animadversion of the publishers to clear the original compilers, and their work, from the discredit of such improbable circumstances.

With respect to Mr. Prynne's objection to the antiquity of the hundred courts; as declared in this addition to K. Edward's laws, viz. that "*Arthur found this law,*" "*Hanc legem invenit Arthurus,*" &c. "and so" (by means thereof) "*united and confederated the whole king-  
 "dom of Britain into one,*" (et ita consolidavit et confederavit regnum Britannie universum semper in unum;) and that "*by virtue of THIS LAW the said Arthur drove  
 "the SCANTIANs (or Scandinavians) and enemies out of  
 "the kingdom,*" &c. I must observe that Mr. Prynne has assigned nothing but negative evidence against the fact, which is by no means sufficient to disprove it. On the other hand, as *Arthur* did really succeed in uniting and strengthening the kingdom against his enemies, the other part of the sentence is the more probable, (that "*he found  
 "this law,*") because he certainly could not have pursued a more effectual and speedy means of restoring a divided and weakened kingdom than by reviving and enforcing "*this law,*" which he is said to have found; and, had he been as careful, after his success, to  
 maintain

“ OUGHT TO HAVE ARMS, and those al-  
 “ ways to keep ready for the defence of the  
 “ kingdom.”

By

maintain “ *this law*,” and to establish it in the countries which he conquered, with *free* and *equal* liberty to all the inhabitants, the happy effects of his success would not have had so short a duration.

For, though the Britons certainly had “ *this law*” both before and after the time of *Arthur*, yet they generally had it rather in *name* than in *use*, or else they would certainly have been *less dissolute* in their morals, and more *united* and powerful against their enemies. They had “ *this law*,” I may say, much in the same manner as we have it at this day; it was really the *law of the kingdom*, but not duly maintained; the *nominal divisions* remained, as at present, but these divisions became *local* instead of *popular*; the mere *divisions of space*, instead of exact numerical *divisions of the people*, which “ *this law*” requires to be effective. A sufficient answer to Mr. Prynne’s objection, against the antiquity of “ *this law*,” may be gathered from a former part of this tract, (p. 33-36.) where I have referred to ample evidence that the *divisions of hundreds and tithings* (CENTURIAE\* and

DE-

\* “ CENTURIATA COMITIA. Those *Comitia*, or assemblies of  
 “ the people of Rome, by *Centuries*, where every one gave his vote  
 “ in his *century*. These sorts of assemblies were first instituted by *Ser-*  
 “ *vius Tullius*, who divided, as is above said, the people into six *classes*,  
 “ and each *classis* into CENTURIAE. These assemblies had a great  
 “ share in ordering of all state affairs, for they were summoned to-  
 “ gether to make great officers, to approve any new law, to proclaim  
 “ war against any people, and to impend any citizen of Rome after  
 “ his

By the same law they were restrained from *pawning* their arms. “ *Non debent*

*DECURIAE* \*) were in use with the Roman colonies in Britain, both in their *civil* and *military* government; and that the *Britons* were incorporated in those colonies; so that it was very natural for the Britons afterwards to retain something of the same kind (though badly observed) in the *civil* constitution of Britain, differing, for the most part, only in names and titles, from the future *Saxon* constitution: as, for instance, (according to information † from this copy of K. Edward’s laws,) “ *woþas* “ *is now called a COUNTY was formerly with the BRITONS in the times of the ROMANS in this kingdom of BRITAIN called CONSULATUS. And those who are now called VICECOMITES (or sheriffs) were then called VICE-CONSULES; and he that was called VICE-CONSUL*

“ his death. They also chose the consuls, prætors, censors, and “ sometimes the proconsuls and chief priests,” &c. See Danet’s *Dist.* of Greek and Roman antiquities. What difficulty then can there be in supposing that “ *Arthur found this law*” among the *Britons*, who so lately before had been incorporated in the *Roman* colonies of this island?

\* “ *Romulus* having at first divided the *Roman* people into three tribes, he appointed, at the head of each tribe, a colonel to command it;” (i.e. *the head of a thousand*;) “ and afterwards divided each tribe into *XXX* *Curie*, or companies, and appointed a *centurion* or captain to command an *hundred men*, and a *decurion* to command *ten men*.” *Ibid.* on the word *Decurio*.

† “ *Verum quod modo vocatur comitatus, olim apud Britones temporibus Romanorum in regno isto Brytanniæ vocabatur consulatus. Et qui modo vocantur viccomites, tunc temporis vice consules vocabantur, illi vero dicebatur viceconsul, qui consule absente ipse vice supplebat in jure et in foro.*” *Leges Edwardi Regis* (N<sup>o</sup> 12.)

“ *hæc illa invadiaræ,*” (i. e. pignori po-  
nere,) “ *nex extra regnum vendere, sed*  
“ *hæredibus*

“ *sui* was the person, who, in the absence of the consul, sup-  
“ *plied his place in the law and in the court.\**” And  
therefore, I think, we may safely admit the assertion in  
this copy of K. Edward’s law, that “ *Arthur found this*  
“ *law,*” (notwithstanding the authority of Mr. Prynne to  
the contrary,) and that the success of the *British* monarch  
in *uniting* and *confederating*, by it, his whole kingdom  
against foreign and domestic *enemies* is an example per-  
fectly suitable to the purpose of my present work †. And,  
with

\* Not only *land-owners*, but also *householders*, and even all the *inhabi-*  
*itants of a county* are to be deemed *suitors to the county-court*. “ *Countie court*  
“ *q̄. le court de viscount PUR TOUTS LES INHABITANTS deins le coun-*  
“ *te.*” This is the remark of the learned Mr. H. Finch in his *Nemo-*  
*technia*, (p. 115.) on the statute of Merton, c. 10. which ordains, that  
“ *every freeman which oweth SUIT to the COUNTY, TRYTHING, HUN-*  
“ *TERS and WAPENTAKE, or to the court of the lord, may freely make*  
“ *his attorney to do these SUITS for him.*” And this must necessarily  
be understood from the very nature of *Frankpledge*, because *every man*,  
according to this *constitutional law*, must be incorporated in some *tything*  
and *hundred*, which are the regular component parts of every *county-*  
*court*, and not the mere *landholders* alone, as some persons of late have  
erroneously conceived.

† At the time when K. Arthur is said to have “ *found this law,*”  
it was, perhaps, no more in general *use* than it is at present; for we,  
even at this day, may also be said to “ *find this law,*” that is, we  
*find it* mentioned in all the law-writers of the best authority, as being  
the *law and constitution of the kingdom*, though the *usage* is certainly  
lost. In a case solemnly argued in the court of common pleas, even  
so late as the 5th K. James, the custom of *Frankpledge* was consider-  
ed, as still *existing in law*, though it certainly did not *exist in usage*.  
And

“ *heredibus suis in extremis legare,*” &c.  
 That “ *they ought not to pledge them, nor*  
 “ *sell*

with respect to the *variations* in these two copies of K. Edward's laws, collated by Mr. Lambard, I may now safely remark, (after having removed some of the principal objections,) that the *variations* which remain are not such as contradict each other in the least: and, though there is still another copy in *Roger de Howeden's* annals\*, which contains the same laws for the most part, but with many *various* readings, and without the *historical additions*, yet these several copies contain *no variations*, upon the whole, which can justify a rejection of any one of them in favour of another: for it is probable that the most learned and loyal people amongst the English, in the 4th year of K. William I. would be induced, at that time particularly, to prepare collections of their old laws, that they might report and obtain a confirmation of them in the parliament that was then called

(a 10-

“ *And it seemed to the court,*” (says the reporter, Sir Edw. Coke,) “ *that they cannot adjudge him a CHIEF PLEDGE upon that verdict,*” (the circumstances of which are these mentioned,) “ *for LEETS were divided in DECURIAS OR DECENNAS, unde dicitur DECENARI II to this day; and out of every TEN, (and one of them being pledge for the other, from whence the COURT WAS CALLED CURIA VISUS FRANCI-PLEGII) one was called CAPITALIS PLEGIUS, seu PRIMARIUS FIDEI JUSSOR; and in some places, at this day, he is called the TITHING-MAN, and, in Yorkshire, TENMANTALE.*” And a little farther he adds, “ *and it appeareth by the said act of 18 Edw. II. that it ought to be enquired at the LEET, if all the CHIEF PLEDGES, with their DECENNERS, that is, the other NINE, appears, by which it appeareth, that the TENTH principal man was the CHIEF PLEDGE,*” &c. VI Report 78.

\* See *Rerum Anglicarum Scriptores post Bedam Principes*, &c. p. 343-348. London 1596.

“ *sell them out of the kingdom, but bequeath them to their heirs,*” &c.

And, to secure obedience to this law, all men, “ *universi,*” were obliged, on certain day every year “ *to shew their arms, throughout the whole kingdom, in the cities, in the boroughs, in the castles, in the hundreds and wapentakes of the kingdom, which ought to be done*” (says this law) “ *in the same day throughout the whole kingdom, lest any persons should accommodate their friends and acquaintance*

(a regular jury of 12 “ *sapientes, et sua lege eruditos,*” “ *wise or discrete men, and learned in their law,*” being required to be *elected* and deputed by each county) expressly for the purpose of *reporting these laws*: and that *historical* parts were probably added to some one of the collections even at that time (for no subsequent time was so likely to give occasion for such an addition) by some one or more of these *learned* representatives, in order to assert the *antiquity* as well as the *certain efficacy* of the excellent constitution of *Frankpledge*, by the eminent examples of the *British* K. ARTHUR, and of the *Saxon* king EDGAR, who, both of them, “ *found this law,*” and experienced the happy effects of *revising and enforcing* it.

“ *quaintance, with their arms, and they*  
 “ *themselves receive them back in return,*  
 “ *and thereby defraud the justice of the*  
 “ *king, and injure the king and kingdom.*”

And the same law also commanded a just and exact observance of the *watch* duty, which could be no otherwise, in those ancient times, than by a regular *rotation* of all the people, in *gyrum*, as described in king William's law, and they were afterwards carefully to provide, against fires, when they returned home to their houses, “ *Et ut WARDIE, (i. e.,*  
 “ *vigiliæ vel custodiæ) juste et rite obser-*  
 “ *ventur, et ut cautè deinceps incendiis*

D d

“ *sibi*

“ *Universi vero predicti singulis annis in crastino purificationis beate Mariæ debent anni excusatione remota*  
 “ *arma sua per universum regnum ostendere, scilicet in civitatibus regni, et in Burgis, et in Castellis, et Haidrodid,*  
 “ *et Wapenachiis, Regni, secundum eis quod statutum est,*  
 “ *et adjudicatum, et juxta quod debent, et idcirco hoc fieri*  
 “ *debet uno eodem die per universum regnum ut predictum est,*  
 “ *ne aliqui possint arma sua familiaribus suis et nativis accom-*  
 “ *modare, nec ipsi illa mutuo accipere, ac justitiam domini*  
 “ *regis defraudare, et dominum regem et regnum offendere.*”



“ *sibi illie provideant, cum ad propria redibunt.*”

The duty of *watch and guard*, by the people, was deemed so very important in ancient times, (and surely ought still so to be,) especially in towns and places of more than ordinary resort, that the law prohibited the holding of *markets and fairs* in all places except those that were duly *enclosed and fortified*, and, in which, of course, the inhabitants ought, according to the common law, to perform the duties of *watch and guard*, and be always *prepared and trained in arms*, as above described, for *the entire service of the king*, in the true legal sense of service, i. e. for the preservation of the *king's peace* in the effectual prevention of all *tumults and riots*; for aiding and assisting the king's courts and their *legal officers* in “*the due process of the law*,” and for the effectual security of all peaceable traders and  
their

their property. See *Leges Gulielmi Regis*.

“ *Item nullum mercatum vel forum fit, nec*

“ *fieri permittatur nisi in CIVITATIBUS*

“ *regni nostri, et in BURGIS CLAUSIS, et*

“ *MURO VALLATIS, et CASTELLIS, et*

“ *LOCIS TUTISSIMIS, ubi consuetudines*

“ *regni nostri, et jus nostrum commune, et*

“ *dignitates coronæ nostræ, quæ constitutæ*

“ *sunt a bonis prædecessoribus nostris, depe-*

“ *rire non possunt, nec violari, sed omnia*

“ *ritè, et per JUDICIUM, et JUSTITIAM*

“ *fieri debent. Et ideo CASTELLA,*” (not

private castles, but such only as had a re-

gular establishment of civil magistrates,)

“ *et burgi, et civitates sunt et fundatæ et*

“ *ædificatæ, scilicet, ad tuitionem gentium*

“ *et populorum regni, et ad defensionem*

“ *regni, et idcirco observari debent cum*

“ *omni libertate, et integritate, et ratione.*”

“ Also no MARKET or FAIR may be, nor

“ may be permitted to be, except in the ci-

“ ties of our kingdom, and in enclosed bo-

“ *roughs, fenced with a wall, and in castles,*  
 “ *and most secure places, where the usages of*  
 “ *our kingdom,*” (so that private castles  
 cannot here be meant, but such castles only  
 as were governed by regular magistrates,  
 according to the common law, as New-  
 castle, Chester, Rochester, Colchester, Ci-  
 rencester, Bicester, &c.) “ *and our com-*  
 “ *mon law and the dignities of our crown,*  
 “ *&c. may not be lost nor defrauded, nor*  
 “ *violated; but all things ought to be done*  
 “ *in due form, and by JUDGEMENT and*  
 “ *JUSTICE. And, for this cause, castles,*  
 (hereby manifestly intending such castles  
 only as I have described,) “ *and boroughs,*  
 “ *and cities, are established and built, viz.*  
 “ *for the security of nations and people, and*  
 “ *for the defence of a kingdom, and there-*  
 “ *fore they ought to be maintained with all*  
 “ *liberty, integrity, and reason.*” Thus  
 every city, town, and borough, was sup-  
 posed to contain, within itself, a com-  
 plete

plete establishment for maintaining the common law, and the dignities of the crown, and for doing all things in due form; and by JUDGEMENT and JUSTICE, which certainly could not, in any other way, be effected, than by these *numerical divisions of the people*; in which the magistracy was always duly proportioned to the *number of inhabitants*, so that whether they were *many or few*, they were all *equally manageable*. And the *rotation of duty*, by being regularly *circulated amongst all men*, was reduced and rendered easy to *all*. The cities of the Israelites under the theocracy had the same proportion of magistrates exactly which our common law requires, and also regular *rotations of public service*; but it does not appear that they had our happy constitution of *juries*, whereby unexceptionable and impartial persons *from among the people*, that are neighbours to the parties and the facts, in every cause,  
are

are appointed the LEGAL JUDGES of it. Had this indispensable constitution been a part of *their* law, as it is of *ours*, it is probable they would not so soon have fallen away from *justice* and *judgement*: for they had no sufficient guard against *partiality*. If a man was accused, he had no right to reject the magistrate from being *his judge*, even though he knew him to be *his enemy*, or the friend and favourer of his accuser: whereas in England, a man may challenge and reject 35 jurymen, if he thinks fit, previous to the trial of a charge of *treason*, and 20 jurymen previous to trials for any other *felonies*, without assigning any reason against them, which is called *peremptory challenge*; and he may *challenge* as many more as he can produce *just* and *legal* exceptions against, which is called "*challenge with cause.*" The total want of this just regulation laid the *magistrates* of the *Israelitish cities* more  
open

open to the temptation of *bribery* than they would otherwise have been; and afterwards, under the monarchy, when these *heads of thousands* were appointed by the king, instead of the people, the want of *juries* became still more apparent; for, if the process against any man was directed by the king's letters, or under his seal, as in the case of *Naboth*, the judges were tempted to preserve only the mere outward form of the law, without the spirit and intention of it: they would not *condemn* indeed without a *legal number of witnesses* were set up to accuse, but then there was no *jury* to determine whether or not these accusers were *credible witnesses*, which the law equally required at that time, as it does at present. But in every other respect the government of the *Israelitish cities* seems (as I have said) to have been similar to what our *common law* requires. The Rev. Dr. *Sam. Croxall*,  
 formerly

formerly archdeacon of *Salop*, has drawn up an account of the *Rulers of Cities*\* in *Israel*.

\* See his *SCRIPTURE POLITICS*, chap. 8. §. xv. concerning the RULERS of CITIES, p. 465, 466, 467, 468, 471, 472, 473, 475, 476, 477.

“ The *third wheel* of their government, which, as we mentioned before, *turned within the other two*, was the constitution and magistracy of every city *within itself*. As the weight of superintending the affairs of every tribe was much lightened to the prince thereof, by the subordinate jurisdiction of the *heads of families*; the political burden of these latter was, in like manner, considerably alleviated by the share of authority which appertained to the *rulers of cities*: Every tribe having several cities belonging to it, and every city being inhabited by a great number of families.

“ The chief magistrate in these corporations was called the *ruler of the city*.

“ Some have questioned whether there were not more than one of these chief magistrates in every city: That there were many subordinate ones, having gradual authority under one another, is very plain; and that these were the same whom *Moses* constituted to be judges of the people in the wilderness, by the advice of *Jethro* his father-in-law. *Exod. xviii. 25. He chose able men out of all Israel,*” (but I have already proved that the able men were really elected by the people,) “ and made them heads over the people, rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens. And they judged the people at all seasons: The hard cases they

Israel; ready to my hand, which is so suitable to my present purpose, that I should

E e do

“ they brought unto Moses, but every small matter they  
“ judged themselves.

“ When, therefore, the tribes came to have cities  
“ belonging to them, there these magistrates presided and  
“ exercised their jurisdiction. Which consisted principally  
“ of these three parts. First, to convene and hold  
“ senates and councils, in order to enact such by-laws as  
“ were expedient for that body corporate, of which they  
“ were members. Secondly, to commission and authorize  
“ the judges to enter upon and to determine, in the judiciary  
“ way, such small matters as lay properly within their cogni-  
“ zance. And, thirdly, to make a part of the great  
“ council of the nation; as often as it was summoned to as-  
“ semble by that person who held the helm of government.

“ These are they who are intended in that precept,  
“ where it is said, Deut. xvi. 18. judges and officers  
“ shalt thou make thee in all thy gates, which the Lord thy  
“ God giveth thee throughout thy tribes. Which officers  
“ we find mentioned upon other occasions. Deut. xxix.  
“ 10. Ye stand this day all of you before the Lord your  
“ God; your captains of your tribes, your elders, and  
“ your officers. Again, Moses says, Deut. xxxi. 28:  
“ Gather unto me all the elders of your tribes, and your offi-  
“ cers. And we find Joshua, when he was old and stricken  
“ in age, Joshua xxiii. 2. called for all Israel; and for  
“ their elders, and for their heads, and for their judges,  
“ and for their officers.

“ So when David calls together the great congrega-  
“ tion to declare his purpose about the building of the  
“ temple,



do injustice to the subject, if I neglected to give my readers some extracts of it in the author's own words.

### The

“ temple, 1 Chron. xxviii. 1, we read of *the captains over*  
 “ *the thousands, and the captains over the hundreds, with*  
 “ *the officers,* being summoned upon that occasion. And,  
 “ afterwards, we are told that *Solomon* made a speech  
 “ unto all Israel, 2 Chron. i. 2. *to the captains of thou-*  
 “ *sands, and of hundreds, and to the judges, and to every*  
 “ *governor in all Israel, the chief of the fathers.* And  
 “ thus, when that pious prince *Hezekiah* was resolved  
 “ upon a reformation both of religion and manners,  
 “ throughout his kingdom, it is said, 2 Chron. xxix. 20.  
 “ *Then Hezekiah the king rose early, and gathered the ru-*  
 “ *lers of the city, and went up to the house of the Lord.*

“ As to their judiciary capacity, they were not, strict-  
 “ ly speaking, judges themselves, but had the power  
 “ of admitting what causes they thought were proper  
 “ to come before the judges, and of rejecting what they  
 “ looked upon as frivolous or unnecessary to be enqui-  
 “ red into. \* \* \* \* \*

“ Of the judiciary authority of these rulers, we read  
 “ farther in the case of *Jeremiah*. When (another)  
 “ *Micaiah* had heard his prophetic denunciations  
 “ against *Israel* and *Judah*, Jer. xxxvi. 11. he went down  
 “ into the king's house, into the scribe's chamber, where  
 “ all the princes (these rulers) were sitting, and inform-  
 “ ed them of it. And after, when *Jeremiah* was going  
 “ out of the city into the land of *Benjamin*, *Irijah*,  
 “ who suspected that he was going to desert to the army  
 “ of the *Chaldeans*, who were lately broken up from  
 “ besieging

The *military* duties of *watch* and *guard*  
in cities, towns, &c. which by the laws

E c 2

of

“ *besieging the city, Jer. xuxvii. 12. took Jeremiah and*  
“ *brought him to the princes. Wherefore the princes were*  
“ *wroth with Jeremiah, and smote him, and put him in*  
“ *prison.*

“ *And upon his farther prophesying that the city*  
“ *should be given into the hand of the king of Babylon,*  
“ *Therefore the princes said unto the king, We have seen thee,*  
“ *let this man be put to death. Then Zedekiah the king*  
“ *said, Behold he is in your hand; for the king is not he that*  
“ *can do any thing against you. Which shews that they*  
“ *bore a mighty sway in the great council of the nation;*  
“ *and that, when they prayed judgement and execution*  
“ *against any one, even the king thought it most safe*  
“ *and prudent to comply with them.*

“ *The number of these rulers, in every city, was in*  
“ *proportion to the number of its inhabitants; as many*  
“ *thousands as it contained, so many rulers, of that rank*  
“ *and denomination, belonged to it; from which re-*  
“ *gulation, the estimation and consequence of each*  
“ *city was discernible at one view. And from this*  
“ *consideration arises that fine allusion of one of the pro-*  
“ *phets concerning the place where Christ should be*  
“ *born; so understood and applied by the chief priests*  
“ *and scribes themselves, as the Evangelist informs us.*  
“ *Mat. ii. 5. Mic. v. 2. But thou, Bethlehem Ephrath,*  
“ *though thou be little among the thousands of Judah, (in*  
“ *comparison of those cities that have rulers of thousands*  
“ *belonging to them,) yet out of thee shall come forth*  
“ *unto me, that is, to be ruler in Israel; whose goings forth*  
“ *have*

of K. William I. were ordered to be performed "*in gyrum*," i. e. in due rotation of

" have been of old, from everlasting. So exactly was  
 " almost every minute circumstance, relating to the Sa-  
 " viour of mankind, delineated and foretold by those  
 " divinely-inspired writers, who lived so many hun-  
 " dred years before he came into the world. • •

#### Captains of Thousands, &c.

" The rest of the officers that governed the army we  
 " find called by the titles of *captains of thousands, cap-  
 " tains of hundreds, captains of fifties, and captains of tens.*  
 " Who probably were of the same rank with those  
 " whom *Moses* constituted, in the wilderness, *rulers of  
 " thousands, &c.* and, at first, acted in a double capa-  
 " city, being at the same time civil magistrates and  
 " military officers.

" The *captains of thousands* seem to have been much  
 " the same as colonels of regiments with us; and the  
 " *captains of hundreds* might probably answer to those  
 " who, in our army, have the command of troops and  
 " companies; the *captains of fifties* and *tens*, to our su-  
 " balterns, serjeants and corporals.

" Among the list of *David's* adherents while he fled  
 " from *Saul*, 1 Chron. xii. 1. 14. and kept himself close  
 " at *Ziklag*; after several names mentioned, it is said;  
 " *These were of the sons of Gad, captains of the host: one  
 " of the least was over an hundred, and the greatest over  
 " a thousand.* Again, we read of others said, 1 Chron.  
 " xii. 20. to be *captains of the thousands that were of  
 " Manasseh.* And, when *David* had thoughts of bring-  
 " ing the *Ark of God* from *Kirjathjearim*, we are told,

" 1 Chron.

of service by all the inhabitants, as I have already shewn, were farther regulated by the

“ 1 Chron. xiii. 1. he consulted with the captains of thou-  
 “ sands, and hundreds, and with every leader. And  
 “ again, when he declared his intentions about build-  
 “ ing the temple, it is said that he, 1 Chron. xxviii. 1.  
 “ assembled all the princes of Israel, the princes of the tribes,  
 “ and the captains of the companies that ministered to the  
 “ king by course, and the captains over the thousands, and  
 “ the captains over the hundreds.

“ So when Jehoiada the high-priest had a mind to  
 “ bring on the restoration, by declaring Joash to be  
 “ king, 2 Kings xi. 4. he sent for the rulers over hundreds,  
 “ with the captains, and the guard, and showed them the  
 “ king's son; and gave them proper instructions what  
 “ they were to do. And the captains over the hundreds  
 “ did according to all things that Jehoiada the priest com-  
 “ manded. And to the captains over hundreds did the  
 “ priest give king David's spears and shields, that were  
 “ in the temple of the Lord. And he took the rulers over  
 “ hundreds, and the captains, and the guard, and all the  
 “ people of the land, and they brought down the king from  
 “ the house of the Lord, and he sat on the throns of the kings.  
 “ And we read, 2 Kings i. 9, 11, 13, of three captains  
 “ of fifties, who, with their fifties, were sent successively  
 “ by Ahaziah, king of Israel, to bring the prophet  
 “ Elijah to him. The Apocryphal writings tell us,  
 “ 1 Mac. iii. 55. that Judas ordained captains over the peo-  
 “ ple, even captains over thousands, and over hundreds,  
 “ and over fifties, and over tens.

These

the statute of Winchester, in the 13th K. Edw. I. A. D. 1285. which, without altering the former law about *rotation*, specifies the *strength of the guard* to be set in each place, and ordains (for I will cite it as abbreviated by Mr. Lambard in his "*Duties of Constables*," p. 13. which proves that he thought it still in force so late as the reign of Q. Elizabeth in 1584.) that "NIGHT WATCHES *should be kept yearly, from the feast of the ASCENSION,*  
*untill*

" These officers, from the *captain of the host* down to the lowest subaltern, appear; after the monarchy took place, to have received their commissions from the king." (Whereas they were before chosen by the people.) " When *Samuel* declares to the people the manner of the king that was to reign over them, this is part of it; 1 Sam. viii. 12. *he will appoint him captains over thousands, and captains over fifties, &c.* Accordingly when *Saul* began to grow jealous of *David's* rising glory, 1 Sam. xviii. 13. *he removed him from him, and made him his captain over a thousand.* So we read, 2 Sam. xviii. 1. that *David* numbered the people that were with him; and set captains of thousands, and captains of hundreds over them. 2 Chron. xxv. 5. and that *Amaziab* gathered *Judah* together, and made them captains over thousands, and captains over hundreds."

“ *untill MICHAELMAS, by six men at*  
 “ *everie gate of everie CITIE, by 12 men*  
 “ *in everie BOROUGH towne, and in every*  
 “ *other TOWNE by six men, or four men,*  
 “ *or according to the number of inhabitants*  
 “ *in the towne, all the night long, from*  
 “ *sunne setting to sunne rising: so that if*  
 “ *any stranger did passe, he should be ar-*  
 “ *rested till the morning, and then set at*  
 “ *large, (if no suspicion were found of him,)*  
 “ *but if any suspicion fel out against him,*  
 “ *then he should be imprisoned till he might*  
 “ *be lawfully delivered. And of these*  
 “ *WATCHES” (says Mr.Lambard) “the*  
 “ *officers before named have the charge*  
 “ *within the limites (or places) of their*  
 “ *authorities, as the CONSTABLE in his*  
 “ *town, the BORSHOLDER in his boroe,*  
 “ *and the HIGH CONSTABLE within all*  
 “ *his HUNDRED: and these officers ought*  
 “ *to see these WATCHES” (says Mr.Lam-*  
 bard, by which he plainly insists on the

con-

tinued force of this statute, so that the enquiry concerning WATCH DUTY at views of Frankpledge ought to be regulated by it) “ *duty set and kept, and ought also to cause HUE and CRIE\* to be raysed after such as will not obey the ARREST of such watchmen.*” This power of ARRESTING suspicious persons in all towns and boroughs; shews the necessity

\* The *hue and crye* was a *military* exertion of the *civil* power which all men were obliged to attend, with their *arms* in *military array*, whenever legally summoned to do so. Even so late as the 3d Hen. VII. 1. as Mr. Dalton in his *Officium Vicecomitum* relates, “ *the sheriff’s bayliff, to execute a REPLEVY, took with him 300 men armed (MOBO GUERRINO) sc. with brigandines, jackes, and guns, and it was holden lawful;*” (says he,) “ *for the sheriff’s officer hath power to take assistance, as well as the sheriff himself,*” p. 355. And a little farther he adds (p. 356.) “ *and every man is sworn (saith Keble) to be aiding to the sheriff in his business; and if they do it not at the request of the sheriff, they shall be fined, 3 Hen. VII. 1. Br. Fine pur contempt 37. and trespass, 266. See also Stat. of 2 Hen. V. cap. 8. which inflicteth both fine and imprisonment upon such as shall not aid the sheriff, they being thereunto required.*” This proves that the *military* capacity of every man is required to support the *civil* government.

cessity of having in each town and borough a proper GOAL or appointed place of confinement; especially as the common law required "that if any man was of so evil credit, that he could not get himselfe to be received into one of these TYTHINGS or BOROES, that then hee should be shut up in PRISON, as a man unworthie to live at liberty amongst men abroad." (Lambard's Duties of Constables, p. 8.) And the expences necessary for the building and maintaining such proper places of confinement might be levied by the COURTLLET on the inhabitants of each district; for the LETT has competent power, according to the common law, to levy taxes for defraying all necessary public works\*: so that the

F f

modern

\* See Powell's Treatise of the Antiquity, &c. of Courts of Lett, or View of Frank-pledge, &c. p. 163. "Any BY-LAWES for the common-weale may be made in a LETT, and are good, and will lye against those that do not consent, as to make carweways, hightways, bridges, and such like,



modern usage of applying to the great national council on such occasions is clearly

“like,” 44th Edward III. fol. 19. “But a by-law to repair a church binds none but such as do assent, vid. Co. 5. fol. 63. A LEET may make BY-LAWES, the lord by prescription may distreyn for the amerçiements, and sell the distresse: For the king may so doe, and the LEET is the king’s, although the lord hath the profits. BROOKE LEET, 34. PRESCRIPTION 40.” The same power, that is here attributed to the lord of a *leet*, certainly belongs also to *sheriffs, mayors, bailiffs, and hundreders, or high constables*, who may hold *leets* by the common law, and consequently have a right also, “by prescription, to distreyn for the amerçiements, and to sell the distresse.” I must also observe that where any lord of a manor hath enjoyed a right of holding a court *leet*, and hath either abused or neglected his power, the king may certainly, according to the true limited doctrine of “*Nullum Tempus*,” (see my separate Treatise on that head,) resume the right of the court and all the profit of it, (which is, properly, *res fiscalis*,) and must, in that case, restore the power of the holding the said court to the *high constable*, or proper officer by the common law.

\* And no public works surely are more for the common weal, or more necessary for enforcing a due compliance with the common law, than the erection of proper goals and places of confinement, or houses of correction, and “of industry,” in lesser districts, to prevent the accumulation of multitudes of prisoners in the county goals, where they mutually corrupt each other, and to prevent the baneful practice of selling convicts into foreign slavery, or into miserable torture in floating prisons, who, according to the common law, ought to be punished only upon the spot where their offences, as well as their contrition and amendment,

ly *wrong*; because it not only occasions a *needless* expence, interferes with more important business of the nation, and grievously prolongs the sittings of parliament, but also tends to chure the members to *private solicitations* in behalf of *partial* objects; facilitates the *practice* of *canvassing* them *individually*; and thereby lays them open to *influence* and *temptation* in higher matters: whereas *frequent* but **SHORT SESSIONS** of *newly elected* parliaments, like those of ancient times, would effectually *cut up the roots of corruption and undue influence*.

In order the more effectually to promote the happy system of government,

F f 2

which

ment, might be known; for, if there should be still cause to suspect a want of improvement in any of them, so that they should not be able to obtain a re-admission into any *visibility* of *Franchisage*; the *Lords* had ample authority to prolong their imprisonment, and to keep them hard at work, to defray the expences of a *year* and *limited* diet, the very best mode of inclining reprobates to hear *reason* and *instruction*. The indefatigable labours of the benevolent and *truly patriotic* Mr. HOWARD (who has so disinterestedly devoted both himself and his fortune to the *public service*) afford ample materials for selecting the most just and effectual means of forming such necessary establishments.

which I now recommend, viz. that "ALL  
 " *freeborne men*" (within this kingdom)  
 " *shoulde cast themselves into TITHINGS,*"  
 (see p. 16 and 17.) for the common se-  
 curity of ALL, it was ordained by king  
 William I. " *Ut OMNES habeant et teneant*  
 " *LEGEM REGIS EDWARDI in omnibus*  
 " *rebus adauctis his quæ constituimus*" (says  
 the statute of William) " *ad utilitatem*  
 " *Anglorum.*" " *That ALL PERSONS*  
 " *should have and hold THE LAW of king*  
 " *Edward*" (wherein the more ancient  
 laws for maintaining the *tithings* and  
*bundreds* are collected and stated) " *in all*  
 " *things, those things being also added*  
 " *which we have ordained*" (said William)  
 " *for the use of the English.*" And no free  
 nation could reasonably desire more sub-  
 stantial and effectual *additions* for the se-  
 curity of their *own peace* and *liberty* than  
 those *additional* laws of William, most  
 of

of which I have already cited \*. To these I must now add a farther excellent clause of K. William's statute †, which is necessary

\* "That all cities, boroughs, castles, hundreds, and wapentaches, of our whole kingdom, shall be *watched* and *guarded* IN GIRUM" (in rotation or by a roster of service) "against malefactors and enemies, according as the sheriffs, aldermen, mayors," (PÆROPOSITI, a title as frequently given to the *hundreders*, or *high-constables*,) "and" (others) "our ministers, shall better provide by COMMON COUNCIL" (i.e. by parliament) "for the good of the kingdom," that ALL "earls, barons, knights, and serjeants, (servientes,) and all freemen of our whole kingdom aforesaid, (universi liberi homines totius regni nostri prædicti,) shall have and hold themselves always well in ARMS and in *horfes*, ut deceret oportet, (suitably to their rank,) and that they may be always ready and prepared to fulfil our ENTIRE SERVICE whenever there shall be occasion, and as they ought of right (de jure) to do for their lands and tenements, and as we shall appoint them by COMMON COUNCIL OF THE WHOLE KINGDOM" (so that the English were so far from being enslaved by what is commonly called the conquest, that K. Wm's statute expressly submits the efficient power of the kingdom, the *national militia*, to the orders of parliament). And also the clause which I have but just now cited for the regulation of WATCH AND WARD.

† "Omnis homo qui voluerit se teneri pro LIBERO, sit IN PLEGIO," (i.e. *fidejussione*,) "ut PLEGIUS eum  
" habeat

cessary for the better enforcing and pro-  
 moting K. Edward's laws, viz. that "every  
 " man who shall be willing TO BE DEEM-  
 " ED A FREEMAN shall be IN PLEDGE,"  
 (shall enter himself into some tithing of  
 FRANKPLEDGE,) "that the pledge may  
 " have him to justice, if in any thing he  
 " should offend; and if any of such" (pledg-  
 ed persons) "should abscond, that the  
 " pledges may pay whatsoever damages are  
 " laid," (or rather are proved,) "and  
 " may clear themselves, that they knew"  
 (or were privy to) "no fraud in the ab-  
 " sconded person. Let the HUNDRED"  
 (court) "be demanded" (or summoned)  
 " and

" habeat ad justitiam si quid offenderit; et si quisquam  
 " evaserit talium, videant plegii ut solvant quod calum-  
 " niatum est, et pargent se, quia in evaso nullam frau-  
 " dem noverint. Requiritur HUNDREDUS, et COMI-  
 " TATUS sicut antecessores statuerunt, et qui justè ve-  
 " nire debent et noluerint, summoncantur *semel*, et, si  
 " *secundo* non venerint, accipiatur BOS UNUS, at si *tertio*,  
 " alius BOS, et si *quarto*, reddatur de rebus hujus ho-  
 " minis quod calumniatum est, quod dicitur *ceapgyld*,  
 " (al. *orsgyld*, quod idem est,) et insuper regi forisfaci-  
 " tura."

“ *and the COUNTY*” (court) “ *and those*  
 “ *who ought of right to attend*” (at either  
 of these courts, as the context requires us  
 to understand) “ *and shall be unwilling,*  
 “ *let them be summoned ONCE*; and, if to a  
 “ *SECOND*” (summons) “ *they shall not*  
 “ *come, let ONE OX be taken,*” (or per-  
 haps the medium-value of one ox, at the  
 current market-price, for thus the quan-  
 tum of the *forfeit* would generally bear  
 a due proportion, or nearly so, to the  
 true value of money; as college-rents are  
 sometimes ascertained by the value of  
 certain quantities of corn,) “ *and, if to a*  
 “ *THIRD*” (summons he shall not come,  
 let) “ *another ox*” (be taken,) “ *and, if to*  
 “ *a FOURTH*” (summons they shall not  
 come,) “ *let what is rated be paid*  
 “ *out of the effects of this man, which is*  
 “ *called CEAPGYLD\*, or ORF-*  
 GYLD.

\* CEAPGYLD. CEAP in the Saxon tongue signifies  
 price, wages, cattle, wealth, or chattles; and GYLD  
 signifies

OXLD \*. Regular summonses, however, were required by law, to be made *seven days before* any of these courts, unless a legal and admissible excuse could be assigned for the omission, (“*et septem diebus antea SUMMONIRI, nisi publicum commodum vel dominica regis necessitas terminum præveniat,*” see K. Edward’s law de Heretochiis, &c.) And a neglect or disregard of a legal summons to a court of law might surely be deemed a contempt of the law, the declared penalties for which (a single or double forfeiture of the man’s WERE †) may perhaps help to explain the

the  
 signifies payment; the compound word CEAPGYLD, according to Mr. Somner, signifies “*rei furto ablata pretium,*” “*the price of any thing stolen,*” but which, in this law, must evidently mean the payment, or forfeit of the man’s reputed wealth; and \* so likewise ORFGYLD. OWE signifies money, cattle, effects; and the compound word Mr. Somner renders “*rei pretium,*” “*the price of any thing.*” So that I suppose both these words to be synonymous with the Saxon word † Were; which is commonly rendered *Æstimatio capitis;*” not the whole value of a man’s estimated wealth, but only such a certain rate according

the nature of the *amerciaments* mentioned above for neglect of *summonses*. "*Et qui leges apostabit, (i.e. violarit,) si fuerit*

G g

An-

according to each man's rank in life, as he might justly be supposed *able to pay* (in case he should incur a penalty or forfeit) without being *ruined* and degraded by it, agreeable to what I have remarked in p. 86 and 87, on the due *limitation of amerциaments*, by the 14th chapter of *Magna Charta*; which was certainly the law of the kingdom long before that time. Because, even in K. Edward's laws, it appears, that a man might be amerced *twice his Were*, "*his Were sum*," for a second offence, and *all that he was worth* for a third offence; so that a man's *Were*, or estimated price, was certainly very far within the compass of his real wealth or substance. And, therefore, all these *amerciaments* must necessarily be understood to have been levied strictly according to the *spirit* of what was afterwards ordained in *Magna Charta*, i. e. *saving to a man* (according to his rank) his *CONTENEMENT*, OR *MERCHANDISE*, OR *wainage*, without degrading him from his rank and means of livelihood, except the same crime was obstinately repeated; and such "*amerciaments were to be made only by the oath of honest and lawful men of the vicinage*," according to the regular usage of all the ancient *leets* and popular courts. The great object of *amerciaments* was to compel *men of all ranks* to respect and observe the laws; whence arose the necessity of varying the quantum of the *mult* in due proportion to the offender's *ability to pay*, without actually depressing or degrading him from his rank; and of this *due proportion* a jury of the vicinage were the only proper judges.



“ *Anglicus, vel Dacus, vel Waliscus, vel*  
 “ *Albanicus, vel insulicola, WERE sue*  
 “ *reus sit apud regem; et, si SECUNDO id*  
 “ *faciat, reddat BIS WERAM SUAM; et,*  
 “ *si quid addat TERTIO, reus sit omnium*  
 “ *quæ habebit.\**

To increase *amerciements* on the repetition of *offences* seems to be both just and necessary; but, whether in so enlarged a proportion as that of doubling the *Were* for a second conviction, and forfeiting *all* on a third, may reasonably be questioned; especially as there is no express exception for second and third offences in the limitation of *amerciements* ordained by the 14th chapter of *magna charta*. Nevertheless, if we consider that a frequent repetition of the same *misdemeanor* is undoubtedly a

*beinous*

\* “ *And whosoever shall neglect (or violate) the laws,*  
 “ *whether he be Englishman, Dane, Welchman, or Scot,*  
 “ *or islander, shall forfeit his WERE with the king; and,*  
 “ *if he shall do it a SECOND TIME, let him pay TWICE*  
 “ *HIS WERE; and, if he shall add a THIRD TIME,*  
 (i. e. a third repetition of the same offence,) “ *let him*  
 “ *forfeit all that he shall have.*”

*heinous aggravation* of it, and that it was always so considered *in the common law*, and punished accordingly by an *aggravation of the mulct*, as appears by the *laws* already cited, we shall, perhaps, be inclined to believe, that the authors of the said *limitation of mulcts* in Magna Charta, though they certainly intended to regulate by it the pecuniary penalties of *crimes in general*, yet, (for any thing that appears,) they had not in contemplation the peculiar circumstance of a *contemptuous repetition* of any crime, and may therefore be justly supposed not to have intended to abridge the salutary spirit of the *common law*, so necessary for its own preservation, in duly punishing, by gradual advances of severity, any *repeated contempts* of its authority.

If all these points be duly considered, it must appear that our *common law* is already vested with *ample powers* to enforce a *revival* of the ancient constitution of this

kingdom; so that nothing is wanting but a general communication of its principles (the purpose of this tract) to engage THE WILL OF THE PUBLIC for its re-assumption; that the "SUMMA ET MAXIMA SECURITAS" of our ancestors (see p. 6.) may be once more established, the happy effects of which cannot be expressed in stronger terms than in the words of Sir Edw. Coke on this very subject. "By the due execution of this law," (says he, speaking of the VIEW of FRANKPLEDGE, in his comment on Magna Charta, p. 73. 2d inst.) "such peace (whereof this chapter speaketh) was universally bolden within this realme, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences, were committed; so as a man with a white wand might safely have ridden, before the conquest, with much money about him, without any weapon throughout England; and one saith truly,

“truly, † *conjectura est, eaque non levis, haud*  
 “*ita multis scatuiffe prisca tempora sceleribus,*  
 “*quippe quibus rapinae, furto, caedi\*, plu-*  
 “ *rimisque*

‡ Referring to Mr. Lambard's explanation of *ESTIMATO CAPITE*.

\* *Cædi, or manslaughter,* (if he meant *voluntary slau-  
 ghters or murders,*) ought not to have been mentioned here  
 as crimes formerly punished only by *pecuniary mulcts*; for,  
 though I am well aware that many eminent law-writers  
 have *supposed* this, as well as the learned Mr. Lambard  
 and the excellent lawyer who quoted him, and though,  
 perhaps, too many instances may be cited of such a  
 corrupt usage sometimes prevailing in ancient times, so  
 as to strengthen the *supposition*, yet it never was the *law*  
 since the establishment of christianity, but a real *perver-*  
*sion* of the law, whenever it was done; which must have  
 been occasioned either by corrupt *partiality*, or *favour*,  
 from the officers of the crown, or through their *ignorance*,  
 and want of *due-discrimination* to be aware of the parti-  
 cular circumstances of *manslaughters*, wherein fines, or  
*mulcts*, might sometimes legally take place, as in *irvo-*  
*luntary manslaughters*, to make men more careful of each  
 others lives, and even in cases of *accidental deaths*, where-  
 in the *deodands* were in the nature of *mulcts*, and also the  
 particular circumstances when *mulcts* might be levied for  
*actual murder*; which was only when the murderer “*had*  
 “ *fled and could not be taken, that a certain sum should be*  
 “ *paid for him, and should be collected, because they had not*  
 “ *taken the killer, &c. †*” But, if he could be taken, the  
 same

† “*Si autem auferet,*” (i. e. interfecto,) “*et capi non possit;*  
 “ *sibi ventor pro eo 66 maræ, et colligebantur in villa ubi quis esset*  
 “ *interfectus;*

“rimisque aliis sceleribus multa impon-  
bantur

same law declared “*feret de eo justitia*,” let justice be done upon him; and the only justice, in the laws of God and man for such a crime was, and is, the retribution of death! The learned judge Bracton copied from K. Edward’s laws, this very expression, concerning a convicted murderer, “*feret de eo justitia*,” as also the alternative when the murderer could not be taken, “*si autem aufugeret, solveretur ut supra dictum est*,” (see leges Edwardi regis, c. 16.) The doctrine, here referred to by the words “*ut supra dictum est*,” is in the preceding chapter of king Edward’s laws, viz. No. 15. entitled, *Lex Murderorum*, to the following effect; † that if a murdered

“*interfectus, et ideo quia interfectores non habuerunt; et, si in tali villa pro paupertate colligi non possent, colligerentur in hundredo in thesauro regis deponenda.*” (Bract. lib. 3. c. 15.) N. B. The fines were to be deposited in the exchequer (*deponenda*, and not appropriated) for a year and a day, lest the murderers should, in the mean time, be taken; in which case the fines were to be returned to the town or hundred, as will hereafter be shewn.

† “*Si quispiam murdratus alicubi reperiebatur, querebatur apud villam ubi inveniebatur interfector illius. Qui, si inveniri poterat, tradebatur justitiæ regis infra ipsos 8 dies interfectionis. Si vero inveniri non poterat, mensis et unius diei respectum habebant ad eum perquirendum. Quod si intra terminum non inveniebatur, colligebantur in villa illa 46 Marcæ. Quod si ad tantæ solutionem pecuniæ non sufficiebat, per hundredum colligebatur, quod in villa non poterat. Verumtamen quoniam omnino villa confundebatur, providerunt barones quod per hundredum colligerentur, et sigillo alicujus Baronis comitatus sigillarentur, et ad Thesaurarium Regis deportarentur, quas sigillatus” (perhaps for *sigillatas*) “ipse servaret per annum et diem unum, quod si infra hunc terminum possit murdrator haberi, traderetur justitiæ regis, et ipsi marcas Thesaurario Regis commendatas haberent.” (So that the fine appears manifestly to be intended for no other purpose than to induce the inhabitants to bring the murderer to justice.) “*Sin infra tempus annum non posset teneri, parentes murdrati sex marcas haberent, rex quadraginta: &c. &c.*”*

“ *bantur pecuniariae, cum hiis hac nostra*

“ *tempestate.*”

dered person was any where found, enquiry was made after the murderer, who, if he could be found within eight days, he was to be *delivered to the justice of the king*. But, if he could not be found, the inhabitants had a *respite (respicit)* of a month and a day, to search for him. Within which term if he was not found, the 45 marks before-mentioned were to be collected in the town, or (if so large a sum could not there be raised) throughout *the hundred*; and to be delivered, sealed up, to the king's treasurer, who was to keep them, sealed up, for a year and a day, that if, within this term, the murderer could be taken, he should be **DELIVERED TO THE JUSTICE OF THE KING**, and the marks were to be *returned*. So that *justice, and not the fine, was manifestly the object*; for, otherwise, some farther provision would have been made, that the fine should not be *returned* to the innocent inhabitants, until the abilities of the guilty person to make it good were ascertained. And, besides, *the justice of the king could not legally be deferred*, because the law ordained that “ *justice should be done*” upon the murderer: “ *fiat de eo justitia,*” and there could be no other *justice* to expiate the crime of murder except *the blood of the criminal, after the laws of God* were acknowledged by our Anglo-Saxon ancestors; so that the king could not remit the due punishment either *for a fine, or through favour*, without drawing upon *his own head a share of the guilt of blood!* And, as a proof of this, the crime of *wilful killing, or murder*, was, in the laws of K. Canute, deemed **NOTELSS, that is, UNEXPIABLE**, which is amply demonstrated by the learned Mr. justice Aland, in the preface to his edit. of Fortescue's Treatise on “ *the difference between an absolute and a limited Monarchy,*” p. 59. to 64. See also my Tract on *Crown Law, &c.*

“ *tempestate,*” (as for instance, 15 men  
hanged up together upon one gallows at  
Newgate the very last execution-day !!!)

“ *nos omnibus merito capitis pœnam ir-*

“ *rogamus, &c.*” 2d Inst. p. 73.

“ *Mos retinendus est fidelissimæ vetus-*

“ *tatis.*” 4 co. 78.

Old Jewry.  
July 17, 1784.

GRANVILLE SHARP.

ΔΟΞΑΣ ἐν ὐψίστοις ΘΕΩ,

Καὶ ἐπὶ γῆς Εἰρήνη,

Ἐν ἀνθρώποις Εὐδοκία.

Glory in the highest to GOD,

And on Earth PEACE,

Towards Men GOODWILL!



## TRACT, Number II.



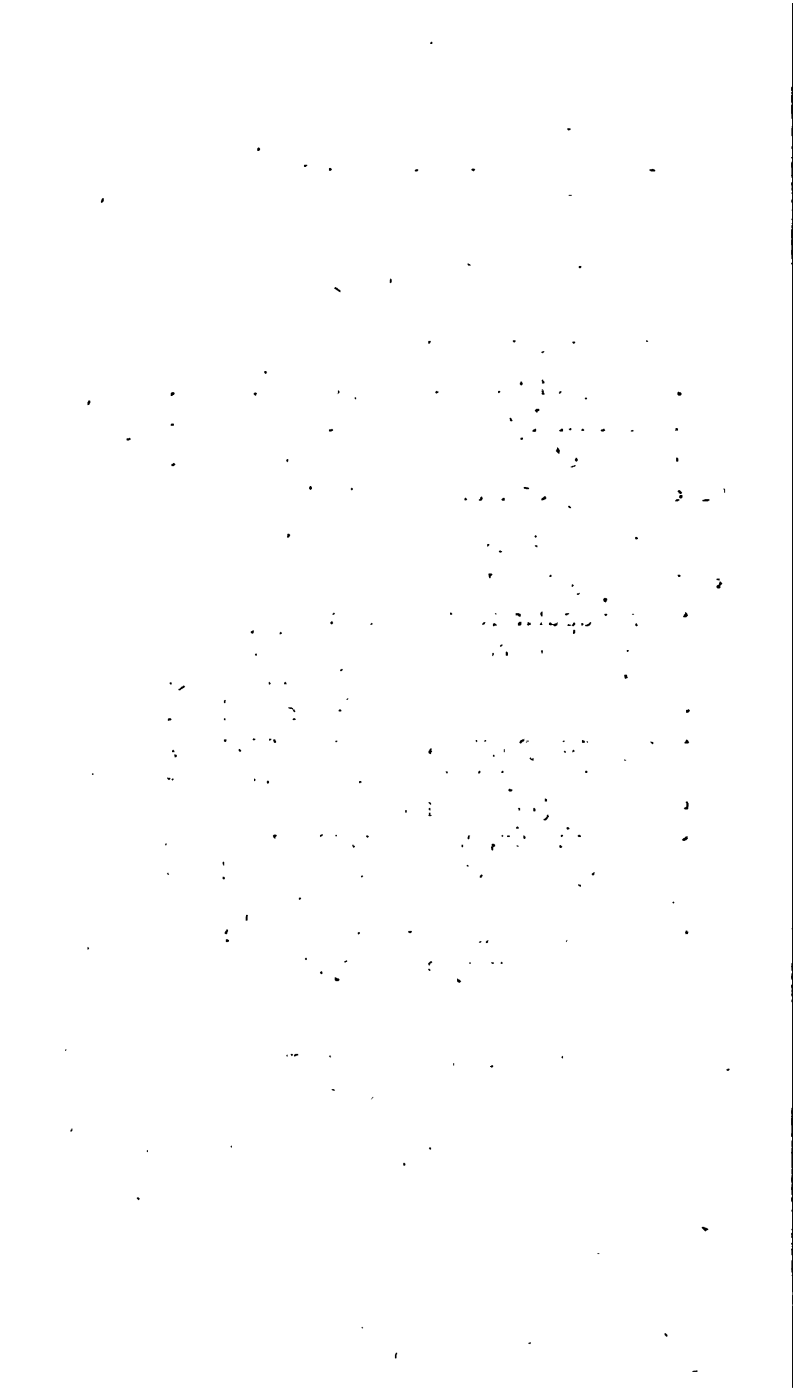
An **ABSTRACT** from the preceding Account of the *Hundreds* and *Tithings*, presented by the author to the committee of delegates from the several counties, &c. and entitled

### “ A P R O P O S A L

“ For removing the enormous disproportion  
“ of popular representation enjoyed by  
“ the corrupt and venal boroughs : which  
“ Boroughs are now vested or monopolized,  
“ in the hands of a few individuals,  
“ as *private property*; a property avowedly  
“ estimated by the value of *the seats in parliament*,  
“ (instead of the only lawful property therein,  
“ *the real rentals of the tenements*,) and, at that  
“ unlawful and exorbitant estimation, notoriously  
“ *bought and sold*, to the disgrace and perversion  
“ of parliamentary authority.”







---

**T**HE present great national evil, the notorious *misrepresentation* of the commons in parliament, cannot *safely* be remedied or altered for the purpose of amendment, by any other mode than that of reverting back to the first principles of the constitution, and by reviving the *ancient rights* of all denominations or classes of the people; at the same time carefully rejecting every *innovation* that is not *consistent in principle* with the *ancient usages* of the realm, of which the *certain effects* are already known: whereas no human prudence can insure the *real tendency* and final effect of *an innovation* in matters of state, howsoever plausible it may at first appear.

Though all true friends to the cause of liberty and the *natural rights* of mankind would wish that *every man* should vote for his representative in the national council, without any other description of *right*, or qualification, than that of *being a man*; yet, if this has not already been *the usage* of the realm, it is not, perhaps, *adviseable*, at least at present, to be adopted.—We know not what would be the effects of it; probably *they would be good*: but we ought to walk in a trodden path, and build on sure foundations.

That *every man*, as such, if he was but an inhabitant of a *county*, did formerly vote in *the court* of that county (called the *plein county*, or *full county*.) at elections for *the knights* of the shire, seems probable, by the description of “ very great  
“ *outrageous and excessive number of peo-*  
“ *ple dwelling within the same counties,*  
“ &c.

“ *Ec: voting at such elections,*” as mentioned in the act of 8 Hen. VI. cap. 14. which restrained the right of voting for knights to the freeholders of 40s. per ann. lands or tenements.

But a just definition of *terms* will best shew what description of persons have an unquestionable *right to vote for representatives* according to the fundamental principles of the constitution.

The titles of *freeholder* and *liber-tenens* are *ambiguous* terms, not sufficiently descriptive of the rank intended to be expressed; for they are applied at present only to *land-owners*; that is, to those who have, at least, a *life-interest* in lands or houses; which last, as being built on *land*, do equally intitle the proprietor to the rank of a *land-owner*: but these ambiguous terms, *freeholders* and *liber-tenentes*, have sometimes been applied also to the *free-renters of tenements by the year*

in

in contradistinction to the *tenants at will* and *holders in villenage*; for the old Saxon *free-borges*, or *free-burgeses*, (that is, the *free-pledges* of the realm,) were equally *free* in their condition with those persons we now call *freeholders*, though the *tenure* of many of them was *not permanent*; they being, (by far the greatest part of them) only the *renters of tenements by the year*; though, indeed, the *land-owners* themselves (those that were *housekeepers*, or *householders*) must have been included under the same general description of *freeborges*.

Sir Edward Coke defines the meaning of the word *burgh* to be “because it sendeth *burghes* to parliament;” and, though this is not the proper derivation of the word, it is certainly the *ancient usage* of all *boroughs*, as well as the *right* of all *burghes*, or *freeborges*. For *burghs* were originally named from *burghes*,

or

or *free-borges*, i. e. *free-pledges*\*, in their collective capacity, in *tithings* and *hundreds* (many of which might be included in one *borough*) and not vice versa, the *burgesses* from the *burghs*, which at present is commonly understood; and may, indeed, in some cases of the more modern boroughs, incorporated by charters, be really the fact †.

In the great annual courts of *Frankpledge* throughout the kingdom, every *housekeeper* was incorporated with nine other neighbouring *housekeepers*, (arch-  
bishops,

\* “ *It was in former times*” (says Sir Edward Coke, speaking of the word BURGH) “ *taken for those companies of ten families which were one another’s pledge, and therefore a pledge, in the Saxon tongue a BORHOR, whereof (some take it) that a BURGH came; &c. whereof also cometh HEADBOROUGH, or BORROWHEAD, capitalis plegius, a CHIEF PLEDGE, viz. the chief man of the BORHOR,*” &c. Co. Lit. p. 109.

† A different etymology may also be assigned to many towns, the names of which end with *berg* or *burg*, which signifies a *fortification*, or *castle*, from the Greek *βουρα*, of which the learned Sheringham has given some instances in his tract de Anglorum Gentis origine, p. 278.

bishops, bishops, peers, and other great men, excepted, who *pledged* their own *households*, and were supposed in law to have a *titbing* within their own families; but all other *householders*, or *renters of houses, per annum*, were incorporated) in distinct legal associations called *titbings*, or *decenaries*, from the incorporated number of *housekeepers* in each: and though all youths of 12 or 14 years of age, as also lodgers, journeymen, and male servants, were likewise obliged to attend the great annual court of *frankpledge*, and be there sworn to the king's peace, and be also regularly included in the *decenary* and trained in the use of arms, together with the *ten* housekeepers in whose families they were respectively included and numbered, yet the *ten housekeepers only* were properly *free-borges*, because they were the responsible persons, who *pledged all the rest*, and had a fixed habitation, and certain

certain interest in the state, paying foot and lot, being liable to all *national*, as well as *county* and *parish*, rates.

And these ten *Freaborgs* of each *titbing* were still farther distinguished by the title of *deciners*, (i. e. *decenerii*,) a term very properly expressive of their rank and quality as fixed and permanent members of a *decenary*, consisting of ten such associated members, one of which was annually elected *chief of the ten*, or *titbingman*.

The term *deciner* has been very much mistaken and misrepresented by law-writers; some applying it merely to the headborough, or *capitalis-freborgus*, the *titbingman*, or head of each ten *free-burgesses*; and others again to every man that was included in a *titbing*; which is a gross abuse of the term; for a *titbing* may consist of many more than ten, (even 20 or 30 males,) yet the *ten housekeepers*



who are principally responsible and thereby actually constitute the *decenary*, both in number and title, those *ten* alone are properly the *deciners* of a *titbing*.

Again, the word *denizen* has strangely puzzled the etymologists; who have sought its derivation, some from the French tongue, others again from the ancient *British*, but both equally in vain: For, though it appears, that the *Britons* had the term *denizen* in use amongst them before the coming in of the Anglo-Saxons, yet, as all the *Roman colonies*, established among the *Britons*, were not only divided into *centuriæ* or *bundreds*, but had also their *decuriones*, and consequently *decenaries* also, (for the captain of *the ten* could not be without *the nine* whom he headed,) both in their *civil* and *military* government, it is clear, that the term *denizen* is of pure *Latin* original; from the numeral adjective *deni*, forming the Latin verb *denizo*,

*denizo*, to express the adoption of any person into all the franchises and rights of a *decenary*. And our law-writers have regularly used the participle *denizatus*, and the derivative substantive *denizatio*, to express the introduction of *aliens* to the franchises of natural-born subjects, and yet they have not perceived the obvious meaning of these words both in sense and sound.

For the alien is admitted by *denization* to all the rights of mutual protection enjoyed by the community of natives in their established *decenaries*; and if he then becomes a housekeeper, and one of the *ten* housekeepers, who jointly constitute a tithing, or *decinary*, he is, of course, a *deciner*; and, with other *deciners*, is an incorporated member of the county which he inhabits; for, as the *bundreds* are the constituent parts of the *county*, and the *tithings* the constituent parts of each *bundred*, it necessarily follows, that the

*deciners* are suitors of the *county-courts*; which right at present is very improperly attributed to the *freeholders*, or (more properly) to the *land-owners* alone; for the right of the *deciners*, or *free-burgessees*, to the *county-courts* is demonstrated by the examples which have been given of general elections for *knights*, *citizens*, and *burgessees*, all together promiscuously in the *county-courts*; which I have recommended in a former tract\*, as one means of reducing the enormous disproportion of representation (at present enjoyed by some particular *boroughs*, to the effectual disfranchisement of all the rest!) whereby the kingdom has lost the means of expressing the *sense of the people* in parliament; and the king has been *deluded* by majorities of alternate factions, factions, which, falsely calling themselves *the commons of England*,

\* See "Equitable Representation necessary to the Establishment of Law, Peace, and good government," &c. p. 22-29.

England, have plunged the nation into desperate measures and enormous expences; and thereby loaded it with a burden, which it cannot possibly bear and retrieve without a speedy reformation.

Though the representatives of cities are now called *citizens*, yet it appears that all cities and large towns have their right of voting as being ancient *boroughs*; that is, they had their right of voting from the inhabitants being *free-borges*, or *free-pledges* of each other, in their respective *decennaries*, as *deciners*; and their right of becoming *deciners* arose from their being *householders*, "paying certain rent per annum;" or "paying each of them yearly an annual rent:" for that is the true definition of *burgage-tenure*, as described by Littleton; and therefore, not only *householders* whose houses are their own property, but also EVERY RENTER OF A HOUSE, OR TENEMENT, who is equally liable

*liable to bear the burdens of the state, by being rated to all public and parochial taxes,*  
 OUGHT TO BE ADMITTED TO VOTE FOR  
 THEIR REPRESENTATIVES IN PARLIA-  
 MENT; a right which they anciently  
 enjoyed. “ *For of such OLD towns, call-*  
 “ *ed BOROUGHS, (says Littleton, p. 109. b.)*  
 “ *come the BURGESSES of the parliament,*  
 “ *when the king hath summoned his par-*  
 “ *liament.*”

The *ancient city* of Westminster, and many other cities \*, as well as the *ancient borough* of Southwark, still retain the original usage and rights of *burgage-tenure*, the mere *renters of houses*, or *householders*, throughout *all the parishes* respectively included in each, being still entitled to vote by ancient prescription, which clearly proves the original nature of *burgage-tenure*, though it is very much altered

\* “ For the towns, that now be *cities* or *counties*, in  
 “ old time were *borongbes*, and called *borongbes*, for of  
 “ such old townes, called *boroughs*, come the *burgesses*  
 “ of the parliament, &c.” Lit. p. 109. b.

ed in some other places, partly through the encroachments of *purchasers of boroughs*, to reduce the number of voters; and partly by granting exclusive privileges to a *few people* in the incorporated chartered boroughs.

The shortest and most easy mode of restoring, to *all the householders of this realm*, their ancient right of voting, is, first, to restore their ancient capacity of DECINERS, by advising them to *throw themselves* into tithings or *decenaries*; and to hold annual courts of *Frankpledge* (now too long neglected) for the *renewal* and continual preservation of the *tithing associations*.

By this means both the *civil* and *military* government of the people will be completely restored, and peace and defence will be completely secured, so that *housebreaking* and *robbery* will no longer be known amongst us, for such was *once* the happy state of the kingdom; and effected

facted by the very *same* regulations here  
 recommended. A farther advantage,  
 by restoring this ancient, legal, and con-  
 stitutional, mode of government, will be,  
 that the exact proportions of the people  
 in each county, who have a *right to vote*,  
 will be truly ascertained; whereby may  
*hereafter* be introduced a representation  
 of all the counties, *perfectly equal*, in pro-  
 portion to their respective numbers of  
*householders*: for if, in each county, divi-  
 sions were formed, consisting each of 200  
*decenaries* or *tithings*, (including 2000  
 householders each,) that proportion will  
 be found, on calculation, to contain the  
 most convenient and proper number to  
 be joined in the election of *one deputy* for  
 parliament, in order to obtain an *equal*  
*representation of all the families in the king-*  
*dom*; and no persons will be excluded but  
 servants and others, who have *no fixed*  
*habitation of their own*; and, consequently,  
 at

at present, have no permanent interest in the state; or, at least, do not bear so large a proportion of relief to its burdens as the *housekeepers* do.

*Two thousand families* might well afford to pay ample wages to *one* representative; and the stipend might be very easily collected, if the *decenaries* were duly formed and established, and the several courts which regularly arise from the *decenaries*, viz. the *hundred courts*; and those which might most conveniently be added to superintend and regulate the *hundred courts*, viz. the court of *one thousand families*, (answering to those of the Israelitish commonwealth, the *thousands of Ephraim*, the *thousands of Judah*,) and lastly the junction of **TWO** *such courts of the thousand*, for the election of **ONE** representative. This last proposed court of 2000 *householders* would probably be



equal to what some of the old *trithing* courts formerly were; which are said to have sometimes included the third or fourth part of a county.

If every division of 2000 *families* were to elect *one* deputy to represent them in the great *common council* of the kingdom, the whole number of *representatives*, for South Britain, would amount (according to the present state of population) to about 476\*; by which there would be a profitable reduction of 37 members.

This would be no *innovation*, because the election would still be vested where it ought, viz. in *all the free householders*,

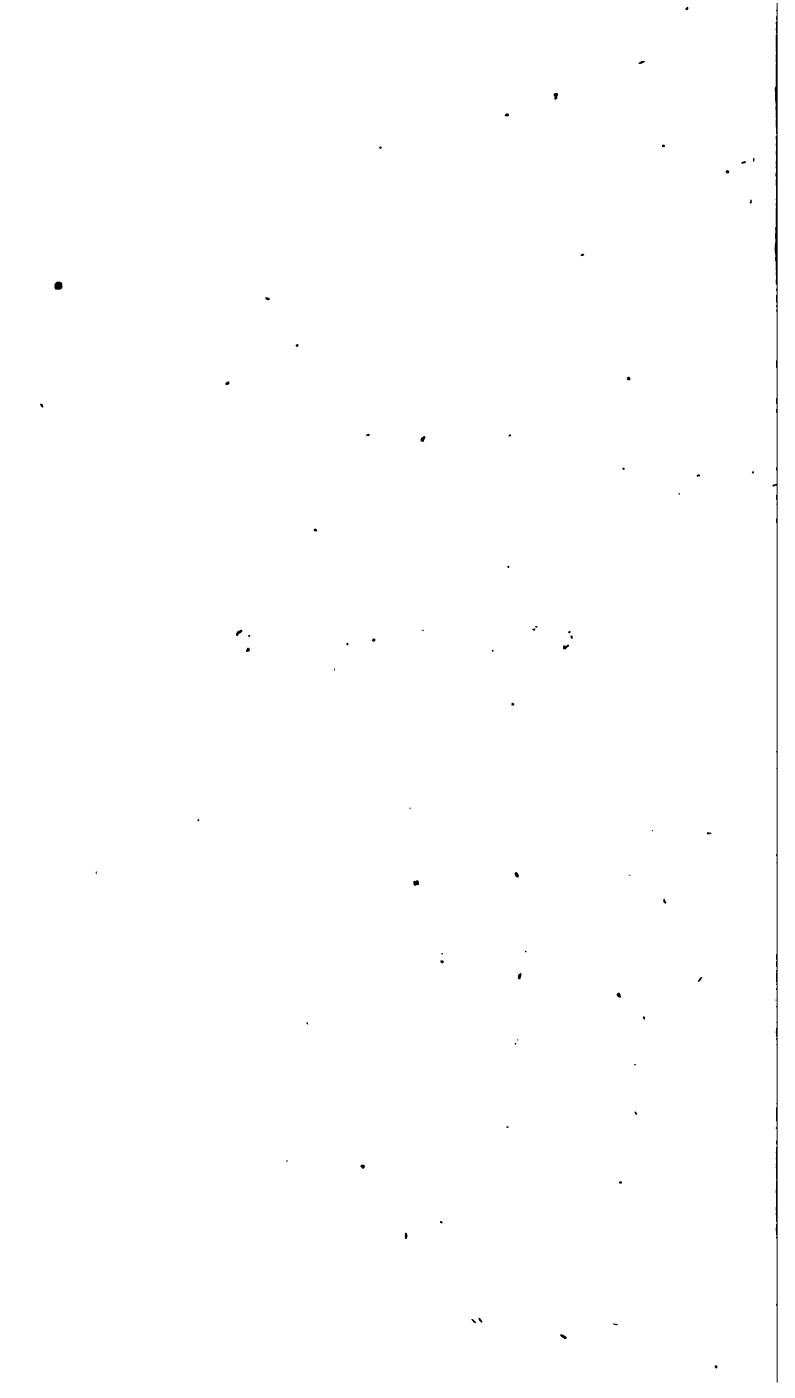
OR

\* This calculation is formed from the account of the number of houses charged, chargeable, and excused, in 1777, viz. 952,734. See Dr. Price's Observations on the Population of England and Wales, p. 11. In my former proposal, from which this is extracted, where I make the number of representatives amount to 500, I have, for the sake of a round number, followed Dr. Price's advice, when he says, concerning the number of houses, in p. 14. "let it, however, be stated (says he) at a million."


or *free-borges*, of all the counties; and that in the most *perfect proportion of equality*: and this order of *equity* would not be liable to change, or to be corrupted, because the number of deputies or delegates would rise or fall in due proportion with the degree of population in each county, from time to time.

GRANVILLE SHARP.




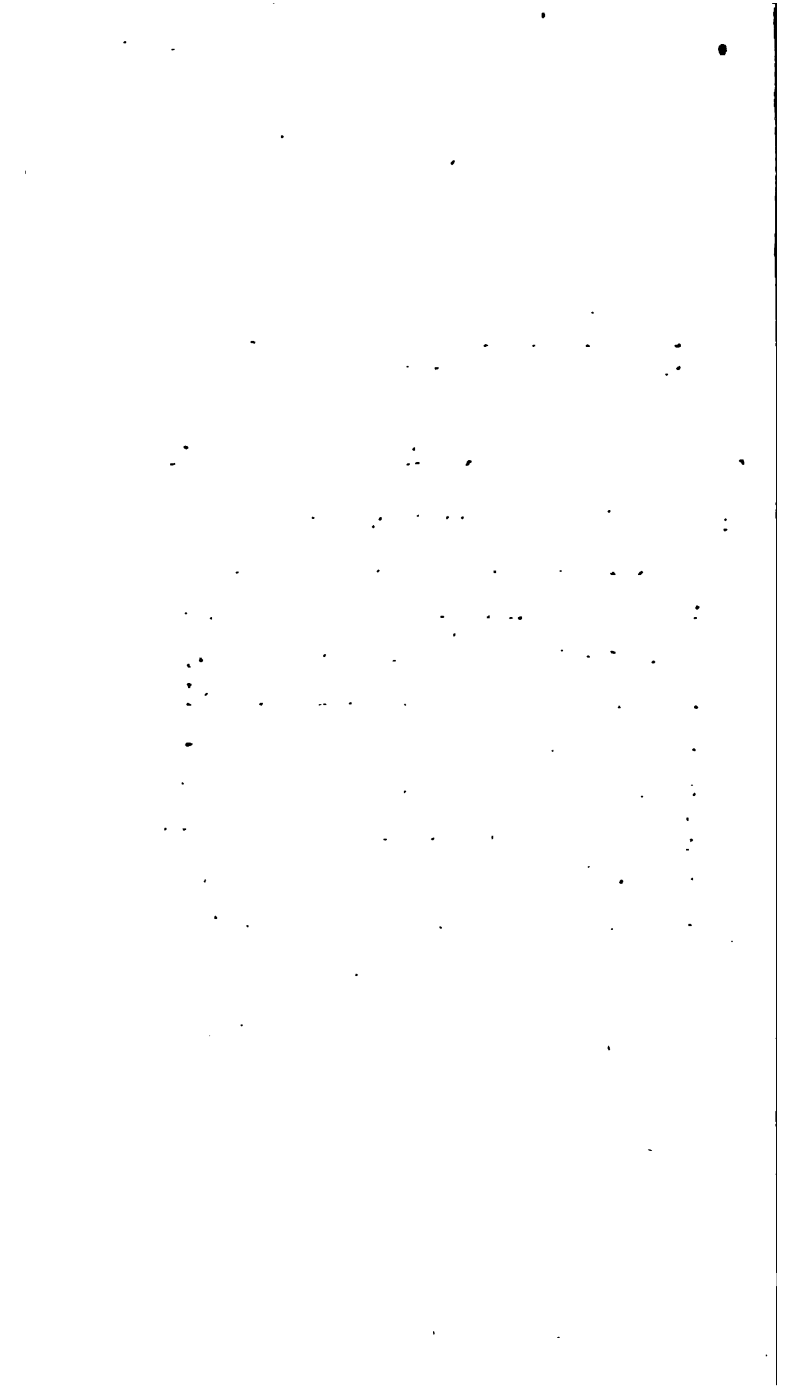


## TRACT, Number III.



Being a *Memorandum* on a late Proposal for a New Settlement to be made on the Coast of AFRICA; recommending, to the Author of that Proposal, several Alterations in his Plan, and more especially the adoption of the ancient Mode of Government by *Tithings* (or Decenaries) and *Hundreds* as being the most useful and effectual Mode of Government for all Nations and Countries.





---

**T**HE proposal for a settlement on the coast of Africa will deserve all encouragement, if the settlers are *absolutely prohibited from holding any kind of property in the persons of men, as slaves, and from selling either man, woman, or child. Even to claim any human person, as a slave, ought to be considered as an affront to the whole community, and be punished accordingly.*

With respect to the proposal for leave to *purchase slaves*, the permission, if granted at all, must be very carefully guarded; and the price given must be considered and declared, at the time of purchase, to be a mere *pecuniary debt for redemption*, due from the person purchased to the society or state of the settlement; and by  
no

no means to be transferred to any single individual, (which would introduce domestic tyranny and traffic in the bodies of men,) but the debt to be discharged at leisure, without increase or interest, whenever the redeemed, or his friends, shall tender the amount of the first price; in default of which, the price should be worked out by a limited proportional service to the state; and the state should hold forth, at the same time, ample encouragement to engage compliance and submission: but it should be an established principle, that the state or society ought rather to lose the value of the purchase than, *by compulsion, to enforce involuntary servitude*, whereby honest labour, that should always be deemed honourable, is rendered odious and slavish.

Rules must also be laid down to prevent *the monopoly of land* within the bounds of the settlement: and a sufficient reserve of  
*land*

*land* must be made for public services (*schools and religious instruction*) in each township; and for *cottage land* to be distributed in small parcels to new settlers and redeemed captives; which parcels *must revert to the state or community, for the same benevolent investiture to others of the like condition*, as soon as the temporary possessors are enabled to purchase larger lots; for it will prevent, in some degree, the monopoly of land, if the *cottage-lots* are untenable with other land. *Common land* should also be reserved for a competent distance round each town and village, wherein *all inhabitants*, rich and poor, should have an *equal personal right*: because *the claims of rich landholders*, when made in proportion to the size of their bordering estates, is unreasonable and unjust; and has occasioned a cruel perversion of the utility of common lands in England: for the live stocks of rich



farmers, occasionally turned loose upon the commons, generally deprived the cattle of the poor inhabitants of their necessary sustenance; and the late divisions for enclosures, by act of parliament, having been, for the most part, inconsiderately granted in the same unjust proportions, have at length nearly annihilated *the common lands of England*: whereas, on the contrary, the large possessions of the neighbouring landholders ought, in reason and natural justice, rather to have excluded them from the least share in the inheritance of the poor inhabitants; or, at most, their share should have been *merely personal*, as men, and individuals, *equal to*, but not exceeding, the claims of their neighbours, that the *common lands* might be truly *in common*.

The managers, entrusted with the society's property to form the settlement, should have no settled dominion or authority

thority over the people as governors or judges, but should be contented with that superiority and influence, which their pecuniary trust, as agents and overseers for the society, will naturally afford them; and their services may be amply rewarded and encouraged after the first year's salary, by an admission to a due proportion or share with the members of the society in the general profits of the settlement, and in the profits of the common or public trade of the society; but *no private trade* whatsoever should be permitted to any of the society's managers and agents.

The officers for internal government, as the governor or mayor, the sheriffs and other magistrates, constables, &c. &c. should be *freely elected every year by all the inhabitants*, due qualifications being premised to render men eligible to offices of dignity and trust.

The purposes of the defence, legislation, public justice, government, and subordination, of the settlers, and their union as a community, (however large and extensive the settlements may hereafter become,) are points more easily to be accomplished than is generally conceived; provided the antient Anglo-Saxon government by *mutual frankpledge in tithings* (or decenaries) and *hundreds* \* be duly adopted; and this being

\* A short, yet very comprehensive and well-stated account of this ancient mode of government was published in the year 1780, on the spur of an occasion which too clearly demonstrated the lamentable want of this excellent institution: I mean the dangerous riots in that year, which would not have proceeded to such an alarming degree had not this institution been long disused, for otherwise "the civil power," as the sensible author remarks, "would have fully guarded us from its outrages," p. 45. "I ascribe" (says he, in letter II. p. 27.) "the complete formation of those general outlines, by which we have ever defined the English constitution, to *Alfred*, on the authority of historians, who specify the particular regulations which rendered his government so happy as well as glorious; which have been, in some degree, preserved amidst violent and numerous revolutions; to which every English-

" man

being already consistent with the common law and antient constitution of this kingdom,

“ man has an unconquerable partiality ; and the restoration of which, to their proper vigour and effect, would secure our persons and property, and preserve that peace and order which are so essential to the happiness of the community.

“ Keeping in view those general, those beautiful, outlines which were formed by the institutions of our early ancestors ; over which the people fought when broken and deformed by the Norman conquest, by the bloody contests of the houses of Lancaster and York, by the tyranny of the house of Tudor, and the folly of that of Stuart ; and an attention to which, alone, rendered the revolution a blessing : we must define an English citizen to be a free-man ; who is to owe his protection, and the security of his family and property, to a civil government, of which he is an essential member.

“ You will observe, Sir, that I confine myself to one object, or one part of our constitution, which provided for the safety of individuals, and the preservation of order by the following regulations, still existing in names and forms ; the revival of which would be the most beneficial and popular act of government which can well be imagined.

“ The whole kingdom was, as it is now, divided into COUNTIES, HUNDREDS, and TITHINGS. Ten families were associated, their names entered, their occupations defined : the males in them from eighteen to fifty, or sixty, years of age, pledged themselves for  
“ the

dom, (still deemed *legal* though not in use,) might be lawfully established, even if the settlement

“ the security of the *tithing*; and to obey the summons  
 “ of the *decenary*, or *tithingman*, on the least apprehension of danger. They were furnished with such arms  
 “ as the times afforded.

“ The perfect knowledge which every neighbourhood had of its inhabitants; the concern which every man had in the security of every man; and the obligation which every decenary was under to be answerable for his tithing; either prevented all violations of peace and order, or corrected them at their first origin.

“ All the decennaries or tithingmen were *chosen by the people* once a-year; and this is an *essential* circumstance in the institution.

“ The ten tithingmen of every district, called a hundred because it contained a hundred families, chose a person to preside over the hundred, to whom they made their appeals, and who had a power of calling them out. All these were amenable to the earl or count who governed the county; and he was amenable to the king, who either by the *earl* or by the *sheriff*, both of which were of his own appointment\*, could call out the whole force of a county, or of any number of counties, as the public exigencies required; while the internal peace and order of each district was provided for without his interference, and in a manner perfectly consistent with his general authority and influence.

“ Nothing

\* The worthy author in this point is mistaken: the sheriff, as well as the earl and *beretoch*, were, in ancient times, *chosen by the people*.

settlement is made within the boundaries of the present English claims; but, in that

“ Nothing has ever been imagined more simple in its construction, or more effectual in the execution, than this part of the English constitution. The several powers of it, which in most cases are in eternal discord, are here so happily blended, that the people are secure and free; the king’s power extends to every thing but mischief, and is, in reality, greater than can be obtained on any other plan.

“ These regulations might be easily restored and rendered as effectual as ever. The prepossessions of the people are strongly in their favour; and, perhaps, no others can be contrived which will not set the body of the people *at enmity* with government; which will perfectly allay their apprehensions and jealousies; will make them the ministers of their own security, while the power of the king *reaches every individual of them, by a chain, every link of which is effectual,* and will not interfere with the prerogative of the king in other departments of the state, however the business of them may be administered. \* \* \*

“ If you mean that it is impracticable,” (says he, in letter III.) “ because the inhabitants of this country are too far advanced in luxury, too indolent, too effeminate, to enter on any plan of security, which will require the least trouble, or put them to the least inconvenience; and if you can ascertain this fact, I have no answer to make. But the trouble and inconvenience are such as would not be complained of by women. What is it but an amusement to learn the  
“ common

that case, the legal process in all the courts of justice must be carried on in the

“ common use of arms? What inconvenience to submit to such regulations as may bring together a neighbourhood, a parish, the ward of a city, a town, a district, &c. to clear them of vagabonds, occasionally to assist the civil magistrate, and to lay the basis of a general security, confidence, and strength, where it ought to be laid, in the whole body of the people?

“ I will venture to affirm, that there is no other method by which disturbances, riots, and insurrections, can be prevented, without debasing the people into the condition of brutes: and there is no other method by which a king may hold every man in the nation in his hands; while every man in the nation would feel and know himself to be as free as it is possible he should be in society.

“ Hints have been thrown out of acts of parliament which render such associations, as I recommend, illegal; but the acts are not specified. I know there are laws forbidding a man's going armed, in a time of tranquillity and peace, without leave from a magistrate, and specifying such assemblies of people as are dangerous and seditious; but without the most distant reference to the right which every man has, from nature, from the connivance of the most despotic governments, and from the express provisions of the English constitution, to provide for his own defence and that of his family; and to unite with his neighbourhood, under the eye and direction of the supreme

“ magistrate,





tenant, of the king's appointment, with a *limited* delegation of authority, according to the constitution of England, whenever

“ cause they have often assembled for mischievous purposes, are delusive. Cardinal de Retz says, that all numerous assemblies are mobs; and I will add, that all mobs are mischievous. Let the people, who might form such assemblies, *be divided into small bodies; and, though the individuals be not improved, they will act reasonably and well.* The design of associations is, to *prevent large and tumultuous assemblies; to arrange the people under the eye of government, as accurately as an army, without diminishing their constitutional independence and liberty; to increase the difficulty of misleading them, and to destroy all ideas of appeals to them.*

“ Here I beg to be understood, not as aiming at any of the rights of the people: but the idea of an *appeal to them* has been borrowed from the government of *Rome*; in England it is, like the introduction of military force, a thing that negligence or mismanagement may render *necessary*; but the constitution is perfect without it; no supposition is made of the possibility of having any occasion to make it; and, whenever it is made, the remedy may be as hazardous as any evil it can be designed to remove. A whole nation, like the human body, in order to act with harmony and pleasure, *must be divided into small parts, each having its local power, subject to the direction and controul of the general will,*” p. 38 to 44.

ever the privy council shall think proper to send one.

But, if the settlement be attempted in any other part of Africa, not claimed by European powers, the managers must first obtain the consent (and association, if possible) of the native inhabitants, or else the establishment must be made on an uninhabited part of the coast: and, as the majority of the settlers will probably be negroes, returned from slavery and oppression to their *native* soil, there will be no necessity to form the plan of government strictly by the constitutional model of England, any farther than reason and experience may suggest the adoption of some particular parts of it: but we may, in that case, assume the liberty of drawing a precedent for government from more antient and more perfect documents than our Saxon records, viz. from the example, or rather the original intention, of *the Is-*

*raelitish commonwealth*, purified and improved by the general precepts and *maxims of the gospel*, and by the example of *free congregational government amongst the primitive Christians*, who decided their own temporal litigations and differences, (*τα βιωτικά*, "*things pertaining to this life*," 1 Cor. vi. 1—8.) as well as ecclesiastical questions, in their regular assemblies of *all the people*: which method was an ancient ethnic custom, (derived probably from patriarchal times,) as appears by the example of the pagan Ephesians, recorded in Acts xix. 38, 39. whom their town-clerk referred to *a lawful assembly* (*τη εννομη εκκλησια*, apparently distinct, as the context proves, from their *ordinary courts of justice*, then subject to the Romans) for the *examination and resolution of all extraordinary questions*.

The Israelitish government, under the theocracy, was administered by *freely-elect-*  
ed

*ed judges and officers* (see my tract on the Law of Nature, p. 325 to 329.) throughout all the tribes and cities or gates; except in the extraordinary cases of prophetic judges; though these were probably *elected* likewise, as soon as their superior, or supernatural, abilities became generally known.

They had a regular gradation of official power, heads of *tens*, of *fifties*, of *hundreds*, and of *thousands*; besides the provincial governors, who were ancient heads of houses or tribes: these altogether formed *one great band of allegiance*, uniting the whole community together for *action and defence*, as *one man*, with *one mind*, viz. by the free resolutions of the majority; the smaller divisions being regularly included and controuled in the larger, and the individuals of all the divisions being mutually bound to each other by the reciprocal ties, or allegiance, of *frankpledge*;

*frankpledge*, which our Saxon ancestors, and many other, even savage and heathen, nations \*, have in some degree maintained, probably from the patriarchal times. For, all men (having *the knowledge of good and evil*) are capable of this form of government, if it is once properly explained to them, and established; and there is no mode of defending, restraining, and keeping in order, a promiscuous body of men, so cheap, so easy, or so certainly effectual for every profitable purpose, as that of *mutual government* by the principles and maxims of *right*, in such equal proportioned congregations; each of which is a constituent part, or member, of a more powerful congregation, in the great *unity*,

or

\* The Romans had their *decuriones* and *centuriones*, not only in their *military*, but also in their *civil*, government; and, consequently, they must have had the popular divisions of *tithings* and *hundreds* much in the same manner as those established by K. Alfred in England, in imitation of the Israelitish commonwealth; and even the *Chinese* and *Japonesse* (it is said) have *tithings* to this day.

or *commonwealth*; wherein every individual, however violent or morose in himself, is prevented from injuring others, by having his person and his property rendered answerable for all damages, which he either occasions by his own rapacious violence or caprice, or which he does not endeavour to prevent in others, as a member of the *titbing* wherein any violence or offence is committed: for, according to the law of *frankpledge*, no man is entitled to *liberty*\*, that is not duly *pledged* by his nearest neighbours for the mutual conservation of *peace* and *right*.

Under this form of government, all public works, as entrenchments, or *earthworks*, and *fortifications*, to secure the towns and strengthen the country; canals, and highways, for public passage; sewers, and drains, for the general health

of

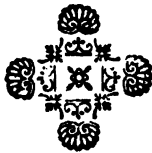
\* “Omnis homo, qui voluerit se teneri PRO LIBERO, sit in plegio, ut plegius eum habeat ad justitiam si quid offenderit,” &c. See Lambard’s *Archionomia*, p. 125-b.

of the country, &c. may be formed and maintained by *a rotation of service*; in which the value of daily attendance must be estimated, that defaulters may bear their share, or rather a *double share*, of the burden: and the expence of *watch and ward*, or *military service*, must be defrayed in the same manner; by which means no debt will be incurred for the defence of the state. Rich funds may also be obtained to support the credit of a public exchequer, (without laying any perceptible burden on the community,) by a general agreement to punish, by fines and mulcts, in due proportion to the wealth and possessions of delinquents; increasing likewise, by repetition, for all offences as well of *omission* (or neglect of public duty) as of *commission*; except for murder, rapes, and unnatural crimes, which, by the laws of God, are unpardonable by  
any

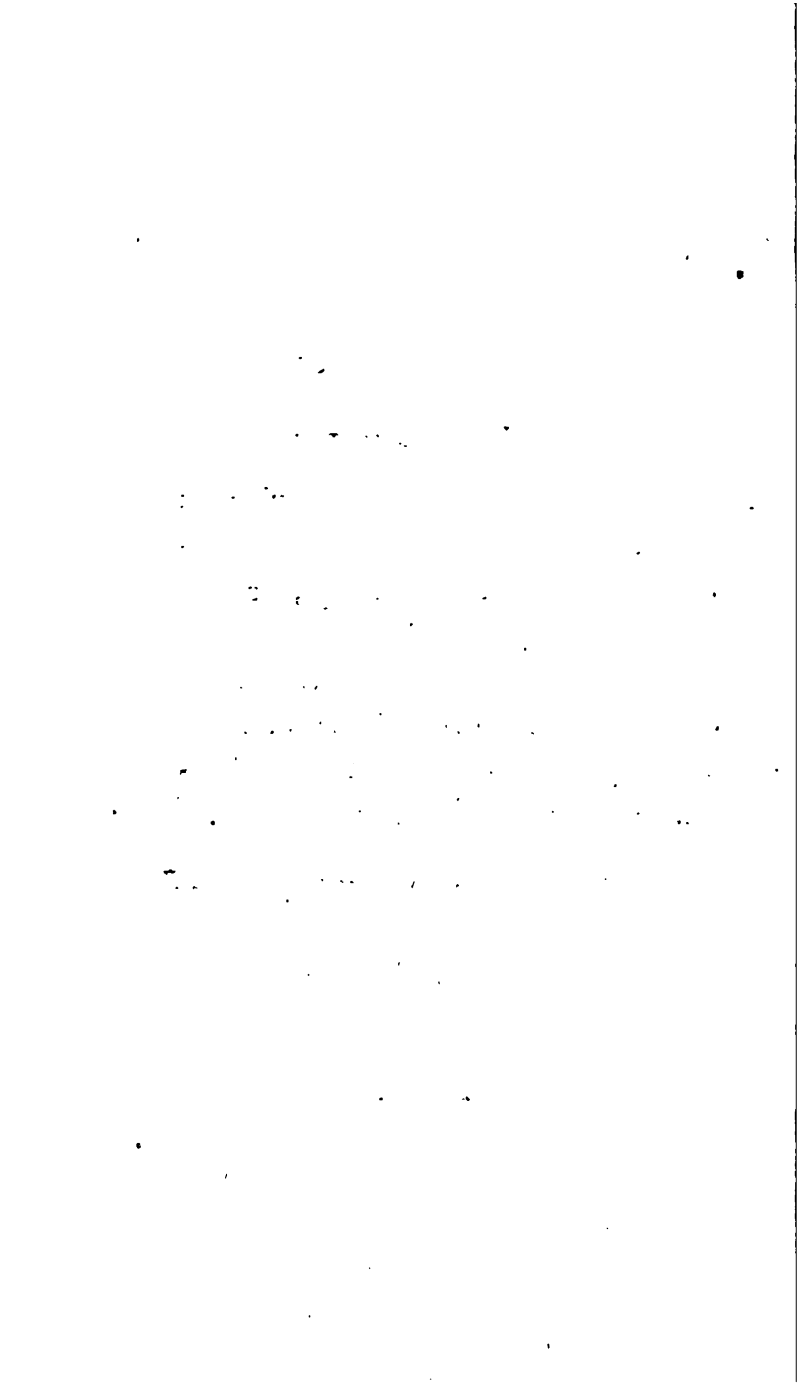
any community. The people themselves to be *judges*, people of the vicinage, unexceptionably disinterested; liable, besides, to the challenge of the parties, and duly *sworn* (according to the known laws of English *juries*) to do *right*, in the presence of the ordinary judges, and officers elected to preside and keep order in the assemblies.

## GRANVILLE SHARP.

Old Jewry,  
Aug. 1, 1783.







---

SEVERAL years ago I made some memorandums of "*A Method of forming frontier Settlements,*" which I copied from the second edition of a book first printed at Philadelphia, but reprinted at London in 1766, and intituled "*An Historical Account of the Expedition against the Ohio Indians, in the Year 1764, under the Command of Henry Bouquet, Esq. to which are annexed Military Papers, containing Reflections on the War with the Savages; a Method of forming frontier Settlements,*" &c. My reference for the last-mentioned subject is to p. 51 of the said book; but, as I have not the book itself at present, I cannot pretend to be perfectly accurate in my quotations from it; neither do I remember

member whether the author recommended a government by *titbing* and *bundred* courts, with their proper officers, according to the Anglo-Saxon model; but only that his proposed settlements were (happily for my present purpose) laid out in equal divisions of *one hundred* lots each, for the maintenance of *one hundred* families; so that, of course, the constitutional regulations for *hundreds*, recommended in the preceding tracts, will not be less suitable and beneficial to *his* scheme than *his* certainly is to mine.

“ Let us suppose a settlement” (says he) “ to be formed for *one hundred families*, composed of five persons each upon an average.”

“ Layout upon a river or creek, a *sq.* of 1760 yards;  
“ or a mile for each side.

“ That square will contain 640 acres.

“ Allowance for streets and public uses	40	} 640 acres.
“ To half an acre for every house.	50	
“ To 100 lots at $5\frac{1}{2}$ acres	550	

“ The four sides of the square measures 7040 yards, which gives to each  
“ house

“ house about 70 yards in front, to stock-  
 “ kade, and the ground, allowed for  
 “ building, will be 210 feet front and  
 “ about 100 feet deep.”

“ An acre of ground will produce at  
 “ least 30 bushels of Indian corn; there-  
 “ fore, two acres are sufficient to supply  
 “ five persons at the rate of 12 bushels  
 “ each person; two other acres will be  
 “ for cows and sheep, another for hay,  
 “ or to be sown with red clover; the re-  
 “ maining half acre may be laid out for  
 “ a garden.” Thus far the author’s  
 plan may be applicable to lands even in  
 England, especially if laid out in less  
 divisions of *titbings*, instead of *bundreds*,  
 preserving the same due proportion of  
 land in lots for each family. . The *ten* fa-  
 milies with their habitations would form  
 a compact little village, under the govern-  
 ment of a *titbing-man*, annually elected  
 from among themselves, whereby all  
 would

would be rendered mutually responsible for each other, for the common peace; and to make good every damage that might be occasioned by the ill behaviour of any individual among them. An estate laid out in small farms, with such a *titling* village in the centre of it, for a constant supply of labourers, might be made to maintain a much greater number of people than land generally does in the ordinary way of farming; and would, consequently, be much more beneficial both to the landlords and to the nation at large. Commons and waste forests or chases might thus be laid out and occupied by the labouring poor, to the great reduction of parish rates, as well as of the price of labour; for, free and useful labourers would never be wanting, if such a regular provision, under their own management could be found for their families. But the possession of such parish-lots should  
 be

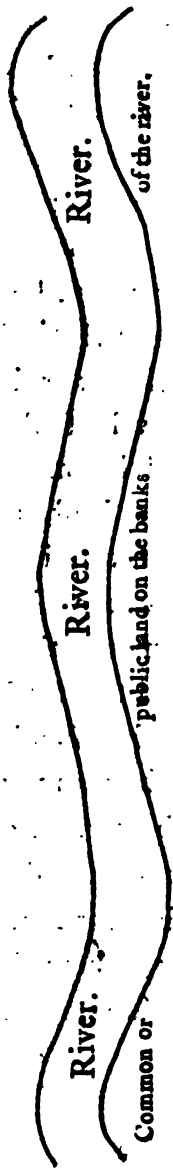
be limited to those persons, who occupy no other land; and should be delivered up to the parish or community, for the use of other unprovided families, as soon as any possessor obtains more land, either as a farm, or in fee, (as recommended in a former Tract,) to prevent *the monopoly of land*, and the entire deprivation of the poor from any share in it, as at present.

The remainder of the author's scheme is suitable only to unoccupied countries, like many parts of Africa and America, where the people are few, and the lands of small value, viz. "Round the town" (says he) "are the commons of three  
 " miles square, containing, exclusive of  
 " the lots above-mentioned, 5120 acres.  
 " On three sides of the town, five other  
 " squares will be laid out, of three square  
 " miles, containing 5760 acres each;  
 " one of which is reserved for wood, for  
 " the use of the settlement; the other four

“ to be divided into 25 out-lots, or plan-  
“ tations, of about 230 acres each; fo  
“ that in the four squares there will be  
“ 100 such plantations, for the 100 fa-  
“ milies. Another township may be  
“ laid out joining this, upon the same  
“ plan, and as many more as you please,  
“ upon the same line, without losing any  
“ ground.”

The following is a rough Sketch of the  
whole.

River



25 lots of 50 acres each for the 1st Settlement A	25 lots 1st Settlement A	25 lots 2d Settlement B	25 lots 3d Settlement C	25 lots 4th Settlement D	25 lots 4th Settlement D	25 lots 4th Settlement D	Bonds for a 5th Settlement B &c.
5760 acres of Wood for the Town A	Common B Common	5760 acres of Wood for the Town B	5760 acres of Wood for the Town C	Common C Common	Common D Common	5760 acres of Wood for the Town D	Great Central R. Road.
25 lots 1st Settlement A	25 lots 2d Settlement B	25 lots 3d Settlement C	25 lots 3d Settlement C	25 lots 4th Settlement D	25 lots 4th Settlement D	25 lots 4th Settlement D	
..... Canal and High Road between two Townships.							
..... Canal and High Road between two Townships.							



The banks of the river (as in ancient times) should be deemed *common* or *public* as the river itself, under the conservation of the *community*; and should be reserved for future improvements, (as for the accommodation, not only of fishermen, but also of manufacturers, traders, and of all industrious strangers,) and docks, or navigable cuts (whenever the level of the country will permit) should be made from the river, as far back, at least, as the centre between every two townships.

The spaces between the squares are left for roads and common communications between the several lots; and the roads which divide two distinct townships should be still more spacious for the common use of all the inhabitants, the cartage of their produce and other traffic, the driving of cattle, &c. and a spacious road, to be formed lengthways throughout the whole settlement, ought, in forming the  
lots,

lots, to be reserved through the centre of each township: the central lots, which will thereby be diminished in *size*, will find ample compensation, in *value*, by their situation on the great central road, which I have expressed by a dotted line. I do not remember whether any roads, or spaces for them, were expressed in the original plan of the author.

I would likewise deviate from the original plan of the author, with respect to the situation of the 5760 acres of woodland for each township; which, I conceive, had better be reserved in one of the most distant squares, at an angular situation from each town, instead of being in the opposite square, according to his proposal: for the towns will not only be more healthy, by having the uncleared lands more distant from them, but also the inhabitants, when on watch and ward duty, will be better enabled to discover  
the

the approach of any lurking savages, or  
other enemies in time of war.

**GRANVILLE SHARP.**

Old Jewry,  
Aug. 2, 1782.

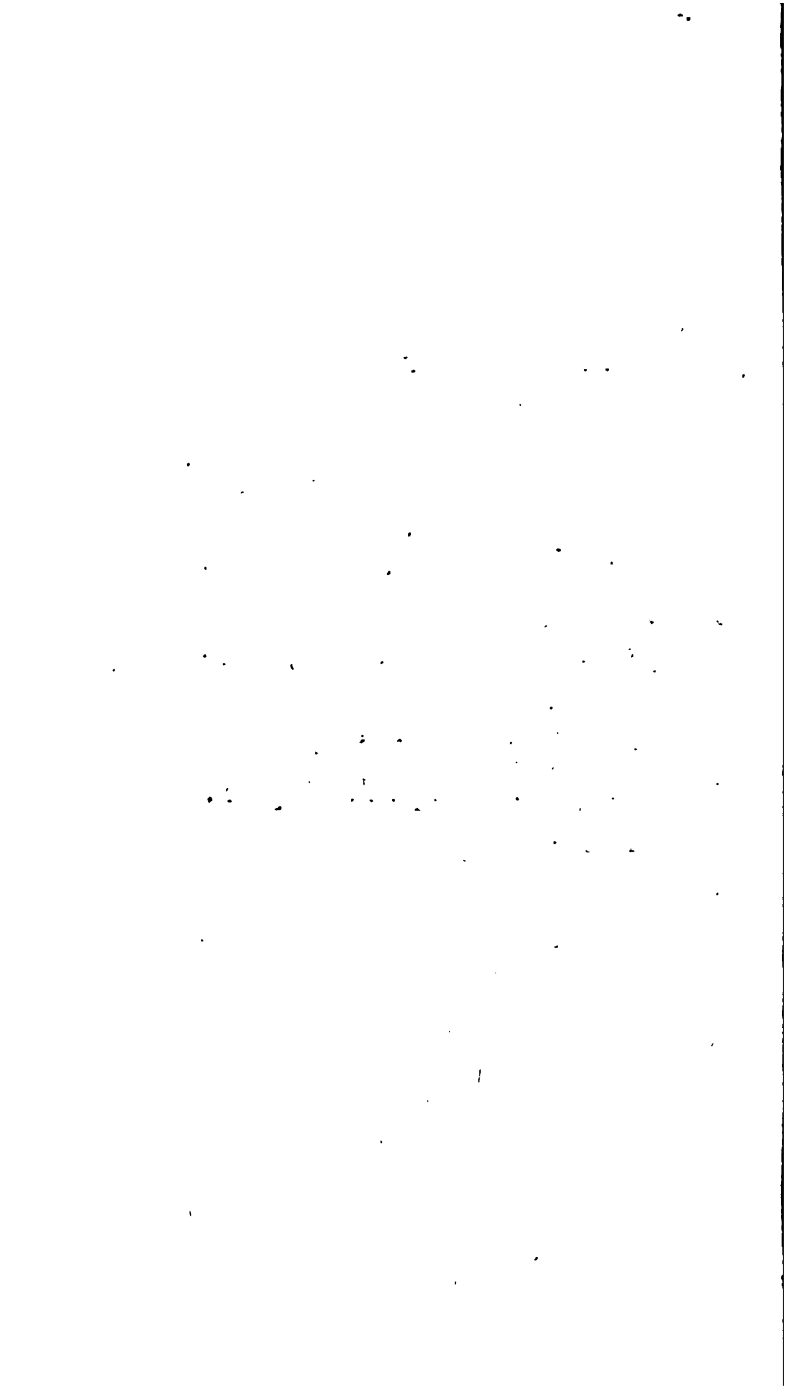


## TRACT, Number V.

---

A farther Declaration of the ancient *popular*, or *congregational*, *Right to elect Bishops*; intended to illustrate, more effectually, a Maxim of the Common Law, cited in p. 91, viz. "*Ordo Episcoporum est Robur Reipublicæ.*" Jenk. Cent. p. 56.

---



“ ORDO EPISCOPORUM EST ROBUR REIPUBLICÆ.”

Jesk. Cont. p. 56.

**I**T is an established maxim of the common law of England, that “ *The order of bishops is the strength*” (force or hability) “ *of the commonwealth*” But, in order to render this maxim obvious and unquestionable, we must necessarily imply and include, in the *episcopal* function, that very important branch of it already mentioned, viz. the presiding as chief *popular* magistrates in the *congregational* courts of common law \*; and we must also suppose the continuance or re-establishment of the *primitive christian freedom* in episcopal elections; that the bishops, by real *popular* elections, may be truly *popular* magistrates, worthy to

P p be

\* See second note in p. 92. “ *Leges Edgari,*” &c.

be entrusted with the *civil* as well as the *ecclesiastical* INTERESTS of the *commonwealth*. Mr. Sadler, in his "*Rights of the Kingdom*," speaking of the time of K. Henry II. says,—"*It seemeth considerable, how all historians (of that time and dispute) do record, THE CHOICE OF BISHOPS to be in the PEOPLE: in PLEBE and in POPULO, as well as in CLERO. They mention RADULPH, ordained a bishop for the Orcades: but rejected by all, because not elected by COMMON ASSENT of the PEOPLE; PLEBIS, CLERO\*, PRINCIPIIS, it is every where in the old monks; and how the poor bishop wandered up and down, as an assistant to other prelates, &c.*" See p. 235, and more instances also at p. 243. The learned author of a tract, (printed several years ago, as appears by the list of tracts published at the same time, but without a date,) intituled, "*Lex Parlia-*

" *men-*

\* For *cleri*.

*mentaria, or a Treatise of the Law and*  
*Custom of Parliament,"* &c. has cited  
 various proofs of the *people's right* to elect  
 bishops.—“*That for some years,*” (says  
 he,) “*after this new charter granted in*  
*this English parliament,*” (meaning a  
 parliament held at London by K. Henry I.)  
 “*the PEOPLE were generally RESTORED*  
*to the right of electing their own magis-*  
*trates and officers, civil, military, and*  
 “**ECCLESIASTICAL;** and this” (says  
 the learned author) “I take to be the  
*grand foundation of the MAGNA CHAR-*  
 “**TA** of English liberties, i. e. as it gave  
 “relaxation from Norman tyranny and  
 “slavery. And this may teach us, that  
 “the rights and liberties of the commons  
 “of England, are neither so illegally  
 “begotten as by rebellion, nor of such  
 “tender years, as some imagine. But,  
 “if any man is not convinced from what  
 “I have before produced, touching the  
 P p 2                      “origin



“ origin of English parliaments, and the  
 “ antiquity of the house of commons, let  
 “ him peruse the authors cited in the  
 “ margin \*, especially the treatise writ  
 “ by that learned judge Sir Robert At-  
 “ kins, on this very subject.

“ Nor was this the first English par-  
 “ liament held under this king, Mat.  
 “ Paris has given us a brief account †,  
 “ (which other authors confirm and en-  
 “ large,) that one Ranulph, bishop of  
 “ Durham, (whom Mat. &c. adorn with  
 “ the sublime titles of, *Vir pessimus, &*  
 “ *corruptissimus; homo perversus & ad*  
 “ *omne scelus paratus; vir subactio ingenio*  
 “ *& profunda nequitia, &c.*) was impri-  
 “ soned, &c. by a common-council or  
 “ parliament of Englishmen. The whole  
 “ passage

\* Dier 60 and 70. See Mirror, c. 1. sect. 3. Bra.  
 Flet. Lambard's Archaion, 57, 239, 245. Sir R. At-  
 kins, p. 20. 17. &c. Vide Post. c. 6 & 7.

† 37. 39. 2 Inst. 15. Saxon Chron. sub anno 1099.  
 p. 208, 210. Flor. Wig. &c. Mat. Par. 39.

“ passage runs thus, *Eo tempore rex te-*  
 “ *nuit in custodia Ranulphum Dunelm-*  
 “ *sum, episcopum hominem perversum & ad*  
 “ *omne scelus paratum, quem frater regis*  
 “ *i. e. rex Willicmus episcopum \* fecerat*  
 “ *Dunelm. & regni Anglorum subverso-*  
 “ *rem; qui cum regi jam dicto nimium esset*  
 “ *familiaris, constituerat eum rex, procu-*  
 “ *ratoresuum in regno, ut evelleret, de-*  
 “ *strueret, raperet, et disperderet, et om-*  
 “ *nia omnium bona ad fisci commodum com-*  
 “ *portaret. Sed mortuo eodim rege iniquo*  
 “ *& Henrico coronato, de communi con-*  
 “ *filio gentis Anglorum, posuit rex eum*  
 “ *in vinculis, &c.*

“ Nor was the concurrence of the com-  
 “ mons in parliament requisite only to  
 “ the imprisonment or exauktion of  
 “ bishops †, the same assent seems as ne-  
 “ cessary, and that too in a superior de-  
 “ gree,

\* “ The office of a court bishop.”

† Rights of the kingdom, p. 118, 133, 140, &c.

“ gree, as to their *election* or *confirma-*  
 “ *tion*; divers instances of this appear in  
 “ the historians of those times: I shall  
 “ select some to prove it *then* the custom  
 “ of England, Scotland, Wales, Ireland,  
 “ France, &c.

“ Anno 1113, Ralph, bishop of Ro-  
 “ chester\*, was elected archbishop of  
 “ Canterbury by the king, *annuente plebe*  
 “ *& clero*†; this was done *in communi*  
 “ *consilio apud Windsore*‡. And I find,  
 “ about the same time, that another  
 “ Ralph, who had been ordained a bi-  
 “ shop in Scotland, was rejected by all,  
 “ because not elected with the consent  
 “ of the people, &c. and, notwithstand-  
 “ ing his consecration, was forced to  
 “ wander about, and officiate as a coad-  
 “ jutor to other bishops.

“ About the year 1120||, one David  
 “ was consecrated bishop of Bangor, by  
 “ the

\* Sax. Chr. p. 306.

‡ Hoveden.

† Eadmer.

|| Malmfb.

“ the then archbishop of Canterbury;  
 “ but it is expressly said, that he had  
 “ been thereto elected, *a principe clero*  
 “ *& populo Walliæ*, i. e. by a Welch par-  
 “ liament. And in the same reign one  
 “ Gregory, an Irish abbot, was elected  
 “ to the bishopric of Dublin, *a rege Hi-*  
 “ *berniæ & clero & populo*, an Irish par-  
 “ liament. So that the commons, at this  
 “ time, were a constituent part of the  
 “ Scottish, Welch, and Irish, parliaments,  
 “ as well as with us in England.

“ And in the year 1128\*, I find that  
 “ famed scholar, Gilbertus Universalis, to  
 “ be elected and consecrated bishop of  
 “ London, *annuente clero & populo*. This  
 “ seems at a parliament at London.

“ But this right of the commons, in  
 “ electing bishops, does more clearly  
 “ appear in Henry II.'s time, when all  
 “ historians agree it to be a general cus-

“ tom

\* Vide Sax. Chr. sub An. 1127.

“ tom both here and in France (and seems  
 “ founded on divers express canons of the  
 “ primitive church.) Inſomuch, as Me-  
 “ zelay, in his history, asserts, that un-  
 “ til that time (i. e. the middle of the  
 “ 12th century) *the voice of the people*  
 “ *in electing bishops, was esteemed the voice*  
 “ *of God.*”

Even the histories, published by papal  
 authority, bear ample testimony of the  
 people's *right*, and the exercise of it in an-  
 cient times, though it has been long  
 usurped by that very authority. See *Italia*  
*Sacra*, (the History of the *Italian Bishops*,  
 cited in the former tract,) vol. I. p. 1284,  
 in the account of the bishops of *Tarracina*;  
 where it is expressly declared, that, on  
 the death of *Avitus*, bishop of *Tarra-*  
*cina*, “ *St. Valentine was elected bishop by*  
 “ *the CLERGY and PEOPLE of that city\**.”

St.

\* “ *S. Valentinus Clari, et Flavie nobiliff. Terracinenſium*  
 “ *ſilius, defuncto Avito, à CLERO et POPULO ejuſdem civi-*  
 “ *tatis episcopus electus,*” &c.

St. Valentine is said to have suffered martyrdom about the year 362.

In the account of the archbishops of Florence, (vol. III. p. 12. of the said work,) Zenobius, about the year 376, is said to have been *elect*ed, not only *by the clergy*, but by ALL THE PEOPLE; which unanimity was esteemed a *divine call*, not lawfully to be refused.\* And, about the

Q q year

\* “ *Non solum a clero, sed etiam ab universo populo solemniter ad PONTIFICATUS \* apicem est ELECTUS. Nec vero licuit ei reniti, vel obfistere ISTIUS MODI ELECTIONI, quorum, ut præfatus sum, ita CONSENSU et ANNISU OMNIUM suorum CONCIVIVUM fuerat postulatus ad ejusdem ecclesiæ gubernacula, ut palam daretur intelligi, DIVINITUS eum ad ejusmodi fuisse officium invitatum.*”

\* This expression, “*pontificatus*” for *episcopatus*, is much more modern than the times to which it is here applied, though considered, perhaps, as a synonymous term by the compiler of this history; who, of course, may be supposed to express himself in the *modern* language of his own times. There are many examples of the like gross *misapplication* of this word, and also of *pontifex* for *episcopus*, by ecclesiastical historians; but we are not therefore to conceive that they found these words, so applied, in the *ancient* records from which they compiled their histories. For the word *pontifex* did NOT signify a *christian bishop*, the etymology of the word being deducible entirely from a gross Pagan ceremony, (as I have already shewn in p. 64.) peculiar to ROME itself, and applicable to none but the *pagan augurs* of ROME, until the Roman emperors of the *Western branch* usurped the title of PONTIFEX MAXIMUS,

year of Christ 443, Silvianus, an African, was *elected* bishop of Tarracina, “*a clero*” “*et populo,*” (tom. I. p. 1290.) But the language, respecting the appointment of the bishops of Tarracina, was totally different in the very next century; nay, even under their *Saint Gregory*, or *Pope Gregory THE GREAT*, the papal usurpation, on the rights both of *clergy* and *people*, was become shamefully notorious! for we read of *bishops* taking the charge of the church of Tarracina, “*ex imperio MAG-*” “*NI GREGORII,*” “*by the command of*” “*GREAT GREGORY!*” *GREAT Gregory* indeed he might well be called; for the popes having, then lately,\* revived the *imperial* title of “*PONTIFEX MAXI-*”  
MUS,”

\* See p. 65.

MUS, for political purposes; and, whilst they continued in power to maintain it, (which they did at least to the death of Valentinian III. A. C. 455, if not to the time of *Augustulus*, when the Western branch of the Roman empire was entirely abolished by Odoacer, in the year 477,) no bishop could either have the power, or even an *inducement* to assume the title of *pontifex*, until the *imperial* head, to which it was inseparably *annexed*, became, “*as it were, wounded to death,*” nor until the time was come, that this “*deadly wound*” was to be “*healed;*” and wo be to that *bishop* who first disgraced his function by that *fatal mark*!

“MUS,” were become suitably *great* and *imperious* in their language; so that, notwithstanding the *counter-title* of “*servus servorum Dei*” which Gregory had hypocritically assumed, as a cloak of humility, to cover the pride of the former title, yet, in his *imperious* language, he sufficiently manifested the character of the “*little horn*,” foretold by Daniel, (ch. vii. 8.) in which “*were eyes, like the eyes of a man*,” (i. e. the horn was to be a *bishop*, or rather a succession of *bishops*, who are properly *see-ers*, or *over-seers*, viz. *Επισκοποι*, very aptly represented by “*the eyes of a man*,”) and “*a mouth speaking great things*.” And, accordingly, we read of “*Agnellus, bishop of Funda*,” (or *Fanda*), “*who managed the church of Tarracina ‘ex imperio,’ by the command of GREAT GREGORY\*.*” And also, that “*Con-*

Q q 2 *stantius,*

\* “*Agnellus Fundanus, episcopus, Tarracinensem ecclesiam administravit, EX IMPERIO MAGNI GREGORII,*” &c. (tom. I. p. 1291.)



“ *stantius, bishop of Palermo, had charge*  
 “ *of the flock of Tarracina, ‘ex imperio,’ by*  
 “ *the COMMAND of the same St. Gregory,*  
 “ *the pontifex\*.”* Thus the popes be-  
 gan to elude the *election* of bishops, by  
 appointing other bishops to take care of  
 the vacant sees: but they afterwards bold-  
 ly took the *election*, even nominally, upon  
 themselves; which, before, they had  
 usurped indeed in effect, but did not so  
 openly profess; and accordingly, in the  
 very same page, we read of one *Ambrosius*,  
 a MONK, being ELECTED bishop of  
*Tarracina*, by pope Alexander II. in the  
 year 1071; “ *ab Alexandro II. ELECTUS*  
 “ *fuit episcopus, an. 1071;*” and also of  
 one *Gregory*, another MONK, being *elect-*  
*ed* † bishop of *Tarracina*, by pope Pas-  
 chal II.

The

\* “ *Constantius Panormitanus, episcopus, curam gessit de*  
 “ *grege Tarracinen. EX IMPERIO ejusdem S. Gregorii pon-*  
 “ *tif. uti palam fit ex lib. 7. epist. 14. (tom. I. p. 1291.)*

† “ *Gregorius MONACHUS Casinensis, a Paschali II.*  
 “ *pantifice ELECTUS, &c.”*

The popes obtained this absolute dominion over *episcopal elections* by various arts and wiles and by gradual encroachments, craftily made, according to the circumstances of the people they intended to deceive from time to time; and they always advanced in their demands after the admission of every unjust claim; which demonstrates the danger of swerving, in any respect, from primitive usages. The *monkish clergy* in every part of the world, in proportion as the false notions of the sanctity of *celibacy* advanced and prevailed, were regularly the instruments employed in thus *sapping* the rights of *the clergy and people*. But the fathers at the council of Laodicea (which was as early as the year of Christ 365, or 367; according to bishop Beveridge. See Dr. Cave's Hist. Eccles. p. 231.) did not proceed so *gradually* in *sapping* the *rights* of the *people*, but boldly excluded them, at once, from  
all

all interference at *episcopal* elections, (see canon XII.) and also from *the appointment of priests*, (see canon XIII.) which, however, as the learned patriarch of Antioch, Balsamon, has remarked, affords proof that “not only BISHOPS were elected, in ancient times, by THE MULTITUDES,” (or people,) “but even the PRIESTS also\*.”

The

<sup>a</sup>Και απο τῶ παρρητος κληρος παραταται (says Balsamon) ὅτι κ̄ μοιου ἐπισκοποι το παλαιον ἐψηφίζοντο ὑπο τῶ οχλῳ, ἀλλα και ἱερεις, &c. That the people were allowed a share in the election, even of their priests, as well as of their bishops, appears also by a quotation which I find in the M. S. *notitia ecclesiastica*, of the learned Dr. Mangey before cited, viz. “Dist. LXXVI. Can. *Quicumque exinde jam accessu temporum PRESBYTERIO vel EPISCOPATUS, si enim CLERI et PLEBIS evocaverit ELECTIO, societur. Vide Anton. Aug. Epic. Juris Pont. lib. 3. tit. -4.*” (the figure preceding the 4 is blotted, and not legible,) “*et lib. 4. tit. 18.*” And that it was an established practice in Spain, for the clergy and people, of each city or district, to elect priests, appears by the 19th canon of the fourth council of Toledo. “*Sed nec ille deinceps SACERDOS erit, quem nec CLERUS, nec POPULUS, propria civitatis ELEGERIT, vel auctoritas metropolitani vel comprowincialium sacerdotum assensio exquesivit,*” &c. *Consilium Toletarum IV. anno C. 633. Sacrosancta Concilia, tom. 5. Par. edit. 1671.*

The *monkish* prelates in the second council of *Arles*, at a much later period, (A. D. 452,) durst not proceed so rapidly against the *peoples right of election*, though shamefully bold, at that time, in promoting “*the doctrines of demons*,” by prohibiting marriage, or (in the words of scripture) “*forbidding to marry*.” See the second, third, fourth, and 43d, 44th, 45th, and 52d, canons of that council. But with respect to *episcopal elections*, they seem to have affected an imitation (though a very delusive one) of the ancient mode of electing two or three persons, (as described in a note of a former tract, p. 83—90.) and they thought themselves obliged still to acknowledge that the people were intitled to some share in the election; which, however, they reduced to as small a proportion as they could venture to do at that time, and craftily stated it in a most precarious light, to leave room for farther  
*innovation;*

*innovation*; viz. that “THREE PERSONS  
 “ *should be nominated by the bishops,*” (i. e.  
 instead of the *people*, as before,) “*out of*  
 “ *which three persons, the CLERGY, OR*  
 “ *CITIZENS, should have power to elect*  
 “ *ONE\*.*” The word VEL is artfully  
 inserted, instead of the copulative ET,  
 between the words CLERICI and CIVES,  
 that the *acknowledged right* of the CITI-  
 ZENS, might be occasionally suppressed,  
 whenever the temper of the times would  
 permit. The same crafty insertion of *vel*  
 for *et* † may be seen in the seventh canon  
 of

\* “ *Placuit,*” (thus like *popes* and *kings* they mani-  
 fested their “*will and pleasure*” against *right*,) “*in or-*  
 “ *dinatione episcopi hunc ordinem custodire, ut primò loco*  
 “ *venalitate vel ambitione submota TRES ab episcopis nomi-*  
 “ *nentur, de quibus CLERICI VEL CIVES erga unum eli-*  
 “ *gendi habeant potestatem.*” Concilium Arelatense II.  
 can. 54. Howel’s Synop. Can. p. 202. These are far-  
 ther proofs of the “*deceivableness of unrighteousness,*”  
 (mentioned in p. 72—75.) by which the *monastic* clergy  
 rendered themselves too generally the notorious instru-  
 ments of “*the man of sin!*”

† “ *Metropolitanus episcopus a comprowincialibus episco-*  
 “ *pis, clericis VEL populis electus,*” &c. Howel’s Synop-  
 can. p. 241.

of the second council of Orleans, (conci-  
 lium Aurelianense ii. A. D. 533.) where  
 it is manifestly intended as a preparatory  
 step to the suppression of the *people's* share  
 in *the election*.

The like *monkish* craft appears also in  
 the third canon of the third council of  
 Orleans\*, A. D. 538. But, though this  
 deceitful mode of innovation could pass  
 at *Arles* and *Orleans*, yet it was too gross  
 to be admitted in the capital of France  
 at a still *later period*; for, even so late as  
 the third council of Paris, A. D. 557. we  
 find the right of the *clergy and people* to  
 elect bishops (expressly, “*juxta antiquam*  
 “*consuetudinem,*” &c.) publicly asserted  
 and established; and even the *royal inter-*  
*ference*, or MANDATE, most carefully, and  
 in *express terms*, PROHIBITED †. But

R r the

\* “*De comprovincialibus vero ordinandis, cum consensu*  
 “*metropolitani cleri VEL civium,*” &c. (Ibid. p. 245.)

† See Sacrosancta Consilia, tom. 5. p. 814. *Paris*  
 edit. 1671. “*Concilium Parisiense III. circa annum*  
 “*Christi*

the grand enemy to *law and right*, ὁ ἀνομοῦς,  
 the PAPAL POWER, found means, at  
 length,

“ Christi DLVII. Pelagii Papæ III. Childeberti Regis  
 “ XLVI. C.VIII.”—“Et quia in aliquibus rebus con-  
 “ *suetudo prisca* negligitur, ac decreta canonum violan-  
 “ tur, placuit ut *juxta antiquam consuetudinem* canonum  
 “ decreta serventur. Nullus, *civibus invito*, ordinetur  
 “ episcopus, nisi quem *populi et clericorum electio* plenif-  
 “ sima quaesierit voluntate. NON PRINCIPIS IMPRE-  
 “ RIO, neque per quamlibet conditionem contra metro-  
 “ polis voluntatem, vel Episcoporum comprovincialium,  
 “ ingeratur. Quod si PER ORDINATIONEM REGIAM  
 “ honoris istius culmen pervadere aliquis nimia teme-  
 “ ritate præsumperit, a comprovincialibus loci ipsius  
 “ Episcopus recipi nullatenus mereatur, quem indebitè  
 “ ordinatum agnoscunt. Si quis de Comprovincialibus  
 “ recipere contra interdicta præsumperit, sit a fratribus  
 “ omnibus segregatus, et ab ipsorum omnium caritate  
 “ semotus,” &c. “ And because, in some things,  
 “ the *ancient usage* is neglected, and the decrees of the  
 “ canons are violated, it pleased,” (*the assembly to or-  
 “ dain,*) “ that the decrees of the canons should be ob-  
 “ served, according to *ancient usage*, no person, con-  
 “ trary to the will of” (any) “ citizens, shall be ordain-  
 “ ed bishop, except him whom *the election of the people  
 “ and clergy* shall have required by the most ample de-  
 “ fire,” (*by the most manifest majority in sentiment.*) “ Let  
 “ not any bishop be brought in by the command of the  
 “ prince,” (*or king,*) “ nor through any condition”  
 “ (or terms) “ whatsoever, against the will of the me-  
 “ tropolitan or of the con-provincial bishops. But  
 “ if,

length to *dispense* with this just Parisian law; for pope *Zacharias*, the same that absolved *Pepin* from his oath of allegiance to king *Childeric III.* thought proper also, in the *plenitude of his dispensing power*,  
 “ to INDULGE king *Pepin*, that he might  
 “ NOMINATE *bishops* to be ordained  
 “ throughout the kingdom of *France*, as  
 “ any sees should become vacant\*.”

R r 2

The

“ if, by royal appointment, any bishop, with too much  
 “ rashness, shall presume to pass through” (or attain)  
 “ the summit of this honour, he by no means deserves  
 “ to be received by the con-provincial bishops of that  
 “ province, whom they know to be *unduly* appointed.  
 “ If any one of the conprovincial bishops shall presume  
 “ to receive him, contrary to” (these) “ prohibitions,  
 “ let him be severed from all the brethren, and remo-  
 “ ved from the esteem of all of them,” &c. Which is  
 clearly the penalty of *excommunication* decreed against any  
 bishop that shall presume to acknowledge the authority  
 of any *royal appointment* to the dignity of a bishop: and  
 they had it in their power to render such appointments  
 null and void, by refusing *the essential* introduction to the  
 office; the giving an *episcopal commission*, by laying on of  
 hands and previous prayer.

\* See *Italia Sacra*, tom I. p. 19. “ *Hic pontifex*,”  
 (speaking of *Sanctus Zacharias*, a Benedictine monk,  
 made



The danger of *regal influence*, in *episcopal elections*, had been early foreseen and carefully guarded against, not only by *the council of Paris*, (last cited,) but also by *the primitive church* \*; and thereby the

made pope, A.D. 741.) "*Pipino regi Francorum IN-  
DULSIT, ut per Gallie regnum in episcopos ordinandos,  
ubi sedes vacasset aliqua, NOMINARET.*"

\* The peculiar care and caution of the *primitive church*, to preserve *episcopal elections* from *undue influence*, is worthy to be remarked, because it demonstrates the existence and pre-eminence of the *episcopal order* in the church, (clearly distinct and superior in office and degree to the *order of presbytery*;) from the apostolic times: and, though all *bishops* must certainly be *presbyters*, yet the constant re-ordination of every *presbyter* after being *elected* or nominated to the office of a *bishop* (by the same essential rites of solemn prayer for the guidance and assistance of the Holy Spirit; with the imposition of hands) demonstrates, that *presbyters*, though really *pastors*, and, in some respect, *overscers* of distinct *flocks* or congregations of christians, yet were not properly *bishops* (*επισκοποι*) in the *primitive ecclesiastical* sense, until admitted to that dignity by the renewal of their sacred orders with the express *designation* to the *episcopal* function: for the *essential rights* of *ordination*, (prayer for the Holy Spirit and laying on of hands,) are the same, for all the three degrees of the christian ministry, differing only in the *designation* to their respective duties of *deacons*, *presbyters*, and *bishops*,

the wickedness of this *lawless* pope, and his INDULGENCE to K. Pepin, is rendered the more conspicuous! The learned bishop Beveridge gives a decided opinion that the 30th canon of the ancient codex, which he calls "*codex canonum primitivæ ecclesiæ,*" was necessarily ordained, "*lest any person, by money or MEANS OF SECULAR POWERS, should be promoted, but ONLY by the free election of THE CLERGY and PEOPLE\*.*" But no comment can be more clear and decided, than the canon itself in guarding against the *interference of princes*, viz. "*if any BISHOP, having availed himself*" (of the power or influence) "*of WORLDLY PRINCES, shall through them have obtained authority over a church, let him be deposed and separated,*" (or excommunicated,)

\* "*Ne quis pecunia, aut SECULARIUM POTESTATUM opt, sed LIBERATANTUM CLERI POPULIQUE ELECTIÖNE promovëatur.*" See his "*Codex Canonum Ecclesiæ primitivæ vindicatus,*" &c. p. 209.

municated,) “ *and also all those that communicate*” (or have fellowship) “ *with bim\**.” The council of Paris, before cited, seems to have copied the spirit of this law. Thus the most jealous republicans may be convinced that *episcopacy* has *no necessary* connection with *monarchy*; but, on the contrary, is an institution which *ought to be entirely independent* of it; *independent*, I mean, with respect only to *NOMINATION* or *election* to the dignity: so that *royal mandates* and *letters missive*, with the “*congé d’elire*,” are by no means founded in *right*, but are only *modern encroachments*, promoted by *popes* and *monks*, when they were unable to *monopolize* the power of *election* to themselves; for they would rather throw the *nomination* into the power and *will* of *arbitrary princes*

\* Εἰ τις ἐπίσκοπος ΚΟΣΜΙΚΟΙΣ ΑΡΧΟΥΣΙ χρησάμενος, δι' αὐτῶν ἐκκλησίας ἐκκλησίας γίνηται, καθαρῶσθαι καὶ ἀφορίζεσθαι, καὶ οἱ κοινῶν αὐτῶ ἀπαρτίς. See bishop Beveridge's “*Codex Canonicus Primitivæ Ecclesiæ*,” can. 30. P. 442.

*princes* than see it *lawfully* exercised by the *clergy* and *people*; provided their *partial* favour towards *royalty* were admitted as an "INDULGENCE" from their own *plenitude of power!* But, though king Pepin was base enough to avail himself of the presumptuous and wicked encroachment of pope Zachary on the people's rights, yet his son and grandson were more honourable than their ancestor, and, instead of basely accepting this most unjust *papal indulgence*, on the contrary asserted the *popular right* to elect bishops in the plainest and most unequivocal terms, and nobly and *disinterestedly* rescued it from the usurpations of the *monkish* clergy, which had almost universally prevailed for some time before. For the emperor CHARLES THE GREAT most nobly ordained, "That  
 " *bishops should be chosen according to the*  
 " *statutes of the canons, by the ELECTION*  
 " OF THE CLERGY AND PEOPLE of the  
 " *proper*

“ *proper diocese\**.” And the emperor Lewis *the Good*, or *Ludovicus Pius*, also asserted the same just rights of the clergy and people: “ *Let a bishop be elected by the*  
 “ CLERGY and PEOPLE of the proper  
 “ diocese, without respect of persons, or  
 “ bribes,” (but) “ *on account of worthi-*  
 “ *ness of life, and gift of wisdom †.*”

These excellent laws would probably have continued in force much longer than they did, if they had been observed with the primitive precautions stated in a former note, viz. to elect *two*, and afterwards to decide by *lot*; because this ancient mode of *exercising the joint elective rights*

\* See *Capitularia Caroli Magni*, lib. i. 83. “ *Ut episcopi PER ELECTIONEM CLERI et POPULI secundum statuta canonum de propria dioecesi elegantur.*”

† See *Capitularia Ludovici Pii*, which are annexed to the canons of the third council of Aix, (“ *Concilium Aquisgranense III. A. D. 816. sub Ludovico Pio celebratum,*” cap. 2.) “ *Episcopus per CLERUM et POPULUM eligatur, de propria dioecesi absque personarum et munerum acceptione, ob vitæ meritum et sapientiæ donum.*” (Howel’s *Synop. Can.* p. 407.)

*rights of CLERGY and PEOPLE* is so safe and perfectly unexceptionable, that it must have obviated the plausible objection that was usually alleged, by popes and monks, against POPULAR elections; i. e. the danger of exciting *party animosities* and *tumults*. The monks, however, were not able entirely to set aside these excellent constitutions of Charles and Lewis, for several years afterwards; and the influence of them seems to have extended even to *Rome* itself: for the bishops at a *lateran council*, not less than 45 years afterwards, (viz. A. D. 861.) asserted the *rights of the clergy and people*; and even the pope himself, (Nicolas I.) concurred! the more willingly perhaps, because the general purpose of the canons, then made, was to curb the extravagance of a *rival* metropolitan, John VIII. archbishop of *Ravenna*, whose province was intituled *Æmilia*. The very first canon was to restrain the archbishop *from conse-*  
S 8
crating

*crating bishops throughout* (the province of) *Æmilia*, except after THE ELECTION OF THE CLERGY AND PEOPLE; a testimony highly to the point in question, and the more especially, if we consider that it proceeded from a quarter, the seat of usurpation, that had long been inimical to all *popular* rights! See “caput primum,”—“*Episcopos per ÆMILIAM non consecres, nisi post electionem CLERICI ET POPULI,*” (*Italia Sacra*, tom. 2. p. 347.) This canon would have done more honour, however, to the *lateran council*, and pope Nicolas, had it extended to episcopal elections in *general*, instead of being confined to the province of *Æmilia*. The archbishop of *Æmilia* had probably encroached on the elective rights of the *clergy and people* of his province; but this alone could not have been considered, at *Rome*, as a *crime*, (it having been the regular practice of the popes themselves,) had

had he not, at the same time, professed independence of the Roman see: and the Pontif, though probably, like his predecessors, a natural enemy to the *elective* rights of the *clergy and people*, was content, it seems, to acknowledge them, whilst the reformation tended to reduce the pretensions of his *rivals*: and indeed he gained a complete conquest over him, by means of this lateran council, wherein he reduced him to the pitiful dilemma of accepting a continuance of his preferment on the most humiliating terms of submission to the *Roman See*, (which was by no means due from a *metropolitan* bishop,) and compelled him basely and dishonestly to yield up the just rights and *independence* of his province to the encroaching jurisdiction of the papal power.

A very few years afterwards, (about the year 877,) pope John VIII. (or rather



John IX; as he is styled by *Platina* <sup>2</sup> openly availed himself of this newly acquired

Many ancient writers of good repute represent pope John VIII. to have been a woman; and some of them add, that he was even an English woman! It is therefore to avoid the throwing any farther unnecessary blame on our reputed countrywoman, that I say, "rather John IX." than John VIII. because the times I speak of were about the quarter part of a century later than the period usually assigned for the insupportable dominion of our extraordinary English pope. Of late, indeed, it has been a sort of fashion amongst protestant writers, as well as papists, to deem the story of pope Joan a mere fable; thus much, however, is certain, that, if it be a fable, it was not invented by the protestants. Accounts of it were written by undoubted catholics, some centuries before the reformation, and these accounts were even printed several years before either Luther or Calvin were perceived. *Martin* (the author quoted for it by *Platina*) was a dominican frier, apostolic-chaplain under pope Nicolas III. A. D. 1277; and was afterwards a papal archbishop in Poland; so that, from his situation and rank in life, it was neither probable that he should want the best information on that subject, which the times he lived in could afford, nor that he should adopt such a story, had it not been current and generally admitted at that time. *Platina*, who quotes him, was employed by pope Sixtus IV. to write the History of the Popes; and would not surely have quoted this story from *Martin* if he had thought that it might with propriety have been absolutely rejected; but, on the contrary, he is so far from making *Martin* alone answerable for the story, that he declares it to be the common report; "Hæc quæ dixi vulgo feruntur," commonly reported; it seems, by several authors; whom he is pleased, however, to deem uncertain and obscure, ("incertis tamen et obscuris auctoribus,") though he had no right to include *Martin* in this vague censure. In the very next sentence, however, he entirely exculpates him (as well as his obscure authors) from the invention of the story, by adding, that it was "what almost all affirm," "quod fere omnes affirmant," see p. 57. a. This was printed at Venice in 1504. *Werner's Rollwinkl*; who, in his "Fasciculus Temporum," relates the story without expressing the least doubt about the truth of it, was a Carthusian frier; so that he

quired extension of power, by *ostentatiously* submitting the *archbishops of Ravenna,*  
(together

he was as little likely, as the two former writers, to publish this account through any pique or prejudice against the *papacy*. Rollinik has also added, that this John "was the sixth pope who had the name of sanctity, without the thing itself; and, like others, was also smitten of God, and not placed in the catalogue of pontiffs." "Et hic sextus videtur factus PAPA, qui nomen sanctitatis sine re habuit usque huc. et similiter sicut alij a Deo plagatus fuit, nec ponitur in catalogo Pontificum." See p. 66. k. This was printed in the year 1488. In the chronicle of Sigobert, the story is related as a *current report*, l. r. *sama*,—"Fama est hunc Joannem feminam fuisse," &c. This author was a *Benedictine monk*, about the year 1100, and his work was printed by H. Stephens, the *French king's printer*, at Paris, in 1513; so that there is no reason to suspect either the author or the printer of *partiality* against *papery*. Of all these different authors, except the *first*, (Martin,) I have the printed copies before me of the several dates abovementioned. Many other authors I find quoted for the story, who were also professed *Roman Catholics*; as *Marianus Scotus*, a monk at Mentz, who wrote a *chronicle* about the year 1069, the *chronicle* also of *Petrarque*, printed at *Florence* in 1478. That of *Antoninus*, who was *archbishop of Florence*, and died A. D. 1459, that of the *abbé Trithemius*, and also the commentaries of *Raphael Volaterranus*, dedicated to pope *Julius II.* &c. &c. &c. and all before the *protestant* times. So that the *fable*, if it is one, must not be attributed to *protestants*; but we cannot say so much for the *opposition* that has been made to it; for the *protestants* may certainly be said to have *innocently* occasioned it, though they cannot justly be answerable for the *futility* of the far-fetched arguments and pretences that have been raked together by *learned Jesuits* for that purpose. The advancement of the *reformation* rendered it necessary, indeed, for the honour of the *eternal city*, to patch up and plaster over the *incurable sores* and blains of the *papal pretenders* to *infallibility*; but, after all the pains that have been taken, the reasons, or rather excuses, alleged for the first introduction of the *perforated chair*, (the famous "*sedes stercoraria*," see *Platina*, p. 57.) are so *frivolous* and *unsatisfactory*, that they seem much more *improbable* and *fabulous* than the *plain fable* itself, (as they presume to call it,) which *most naturally* accounts for the *absurdity*!

(together with the archbishops also of *Milan*,) against all probability of *right* or *seemliness*, to the jurisdiction of the *bishops* of *Pavia*, or more properly *Papia*; a very *ominous* appellation, derived, as even my popish author admits, (see *Italia Sacra*, tom. I. p. 1075.) from the *Latin* interjection *PAPE!* *O wonderful*, or *O strange!* The Pontif, however, thought himself obliged to admit, at the same time, the *elective rights* of the *clergy and people* of *PAVIA*, probably the better to secure, from examination and opposition, the usurped authority of the "*privilegium*," (as he called it,) whereby he exalted the *bishops of Papia*, above their brethren, the independent metropolitans of *Ravenna* and *Milan*. This "*privilegium*" would not have been mentioned by me, had it not contained an express testimony\* to the

\* "*-Decernimus, ut, si humana contradictione*" (probably for *conditione*) "*tuz sedis episcopus ex hoc mundo*  
"*migraverit,*

the popular right of election. And the author of *Italia Sacra*, speaking farther of this Pope *John*, and Bishop *John*, relates, that the latter obtained these and also other privileges, in a council held at *Papia* by Pope *John*; but these, it seems, were the chief, as being the only privileges he has particularized; “ *In quo*” (concilio) “ *ab eodem PONTIFICE ALIA* “ *obtinuit PRIVILIGIA, ac præcipue, ut* “ *POPULO, CLEROQUE Papiensi SUUM* “ *EPISCOPUM ELIGENDI JUS ESSET,* “ *eidemque concessit, ut quoties Mediolanen-* “ *sem, ac Ravennatensem archiepiscopos* “ *cum suis suffraganeis ad synodum vocaret,* “ *accederent,*” &c. *Italia Sacra*, tom. I. p. 1087.

About seven or eight years before this time, viz. A. D. 869 or 870, the 36th council

“ *migraverit, de proprio clero quem idoneum præ cæteris* “ *CLERUS et POPULUS repererit, potestatem habeant se-* “ *cundum statuta venerabilium patrum, et Romanæ* “ *sedis antistitum, nulla seculari contradicente poten-* “ *tiâ, eligendi episcopum.*” *Italia Sacra*, tom. I. p. 1086.

council of Constantinople (intituled, by the popish or Latin party, the eighth general council) wickedly declared against the *unalienable popular right* of electing Bishops, and formed a canon expressly against it. Pope John therefore, on the last-mentioned occasion, might have (besides his partiality to the bishop of *Papia*) a still farther inducement for re-establishing the *clergy* and *people* of *Papia* in their just *right* of election, viz. to demonstrate the *plenitude of his power in dispensing with laws*; because, whatever tends to aggrandize the papal jurisdiction may sometimes afford an ample reason even for a *Pontif* to do *right*! The same reason, probably, may be assigned for the continuance of *popular* elections, even at Rome itself, long after the said decree of the general council against them; for pope Adrian III. in the year 895, was "*so bold*," ("*tanti animi fuit*," says Platina,) in  
 behalf

behalf of this just *right*, that he announced it to the senate and people, viz. that,  
 “ *in creating a pope, the authority of the*  
 “ *emperor should not be waited for; and*  
 “ *that the suffrages of THE CLERGY and*  
 “ *PEOPLE should be free\*.*” And he adds,  
 that “ *this institution was rather attempt-*  
 “ *ed than begun by pope Nicolas I.*” But  
 this, however, was not the case; for  
 even he himself relates in his accounts  
 of pope Nicolas, on the preceding page,  
 not only that the *clergy and people* did  
 really elect without waiting for the *im-*  
*perial will*, but also, that letters were  
 afterwards *received from the emperor Lewis*  
 (II.) “ *in which he highly commended the*  
 “ *Romans, that they had knowingly and*

T t

“ *wholly*

\* “ Adrianus III. patria Romanus: patre Benedicto: tanti animi  
 “ *fuit: ut in initio pontificatus sui statim ad senatum populumque retu-*  
 “ *lerit: anno Domini DCCCXCV ne in creando pontifice imperatoris*  
 “ *auctoritas expectaretur: utque libera essent et cleri et populi suffraga:*  
 “ *quod quidem institutum a Nicolao primo tentatum potiusquam in-*  
 “ *choatum diximus.”* But mark the leading cause of Adrian’s *bold-*  
 “ *ness;* “ *Ille sum credo hac opportunitate Adrianum: quod Karolus*  
 “ *Imperator ab Italia cum exercitu discedens: in Normannos rebellantes*  
 “ *moverat.”*

“ wholly created their own chief pontif,  
 “ without waiting for the wish of others,  
 “ who, perhaps, in that business, through  
 “ the want of personal knowledge, might  
 “ have had less judgement \*.”

It is manifest, therefore, that Platina was inclined to attribute the merit of promoting free *popular elections*, at Rome, rather to the *Pope* than to the *Emperor*, to whom it was more strictly due, even according to his own evidence: for *Popes* and *Monks* could not endure a concurrent right of the *people* in episcopal elections, except when it might seem to *aggrandize* the holy see as a *peculiar privilege*; or unless it were admitted in any particular place by *papal* favour and *indulgence*, as at *Pavia*, for the like purpose of *aggrandizement*! But in all other cases they were the regular professed enemies to *popular right*;

\* “ Supervenere a Ludovico imperatore literæ: quibus Romanos  
 “ admodum laudat: quod summum pontificem scientè et integrè crea-  
 “ sent: non expectato aliorum voto: qui fortè ea in re ob igno-  
 “ ranciam personarum minus judicii habuissent.”

*right*; so that to *their* influence, and not to the influence of imperial or royal power, is the wicked *decree against free elections* to be attributed. And this was carried, it seems, on the stale pretence of probable *tumults*, and “*the confusion that a multitude of electors might occasion,*” just as the present *tumults* in Westminster afford, to the enemies of the English constitution an exulting argument against the ancient *right of frequent elections*; who, instead of being willing to correct the *abuse* of an institution, would rather destroy the profitable *use* of it: but such perverse reasoners are either *deplorably ignorant*, or else *shamefully wicked*: for the same argument holds equally good for *robbing* the people of their *pecuniary* property; because many of them make a very improper use of what little money they have to spare; and indeed the robbery would be much *less dishonest* and *sin-*



*ful* in the latter case than in the former; for, though both are *rights* of the people, and cannot therefore be infringed without *iniquity* and *injustice*, which are hateful in the sight of God, yet the *right* of *election* (whether it be to *civil* or *ecclesiastical* offices) is *inestimable*, and above price; so that no plea of *expedience*, or even of “*necessity*,” can justify the *gross dishonesty* of infringing it. They might as well persuade us to cut off our legs, lest we should strain our ancles in walking! or absolutely to prohibit *all* men from riding on horseback, because *some* men have had dangerous falls, and others have accidentally lost their lives by it! yet such arguments are not more *grossly absurd* than this pretence of *tumults* as a reason for robbing the people of their *election rights*; and yet *this absurdity* prevailed in the 36th council of Constantinople, though the popular *right* was expressly allowed! “*On a longtemps conservé*  
“ *aux*

“ *aux laics LE DROIT d’assister aux élec-*  
 “ *tions,*” (says *Herycourt* in his *Analyse*,  
 p. 17.) “ *et d’y donner leur suffrage. La*  
 “ *CONFUSION QUE POUVOIT CAUSER*  
 “ *LA MULTITUDE DES ELECTEURS*  
 “ *engagea à n’y admettre plus que la clergé.*  
 “ *On en fit un decret exprès dans la VIII.*  
 “ *concile général.*” [For so he stiles (but  
 very improperly) the 36th council held at  
 Constantinople, in 869.] “ *Ce changement*  
 “ *n’a point empêché que l’on ne fut obligé de*  
 “ *demander le consentement des SOVE-*  
 “ *REIGNS.*” And this obligation, to ask  
 the *consent of sovereigns, monkish prelates*  
 were content to endure, (notwithstand-  
 ing that the interference of all *secular*  
*Princes* in episcopal elections is strictly  
 forbid by the canons of the primitive  
 church, see p. 317.) provided they could but  
 prevail on the *Monarchs* to join them in  
 effecting an entire exclusion of the *people’s*  
*right to elect.* However neither the *mon-*  
*kish,*

*kish*, nor the *monarchical*, influence could entirely overcome the *popular right* in England, until many years afterwards, which I have already proved by several incontestible examples. But it was far otherwise in *France*: for, even in the same century, (ninth,) the *Kings of France* (instead of maintaining equal justice between *the clergy and people*, like their predecessors Charles the Great, and Lewis I. and II.) now claimed to *themselves the NOMINATION* of BISHOPS; of which I find a memorandum in the learned Dr. Mangey's *Notitia Ecclesiastica*, before cited, viz. "It seems" (says he) "that in the ninth century the kings of France claimed the NOMINATION of Bishops." And, if this *monarchical* usurpation of the most essential *popular right* in the Christian church was not actually promoted by the Roman "mystery of iniquity," (for I have already given an instance of Pope *Saint Zachariab's*

*riab's plenary indulgence to such dishonesty,* (see p. 315.) it had, at least afterwards, the *express consent* of the *Roman court*, provided that the *papal share* of the unlawful plunder might be admitted with it: and accordingly we read of "THE CONCORDATE" (as formerly between the murderer *Herod* and *Pontius Pilate*, now also) "between *Pope Leo X.* and *K. Francis*: The *Pope* *COLLATES* upon the *King's NOMINATION.*" This memorandum I found in *Dr. Mangey's Notitia Ecclesiastica*, for which he cites *Herycourt*, lib. 1. c. 6. "*Le CONCORDAT fait entre Leon X. et François I. a transferé à nos Rois tout le DROIT des électeurs.*" "The concordate made between *Leo X.* and *K. Francis I.* hath transferred to our Kings all the right of the electors." This indiscriminate writer could not perceive (or, if he did, he must be charged with a much worse fault than *indiscrimination*)

nation) that the **DROIT** of the *electors* could not be *transferred* by those who had *no right* in it; and, consequently, that the kings of France do not exercise a **DROIT**, but a **TORT**, as long as their unjust usurpation of the **DROIT** continues; and I wish I could speak more favourably of the *usurpation of our elective rights* in England!

The rights of *episcopal* elections, as well as the nature of the *episcopal office* itself, have, indeed, been subjects of much controversy in the Christian church; and the several dissentients, that have hitherto published their opinions, might long ago have approached much nearer to an agreement in the happy medium of truth, had they been endued with sufficient *impartiality*; but this, alas! has been too much wanting on every side of the controversy. The *episcopalians*, on the one hand, though they have, in general,  
well

well maintained and proved the nature and efficacy of the *episcopal* function, and the exercise of it in every age of the church, clearly distinct from the office of mere *presbyters*, (demonstrating that, though every *bishop* must be a *presbyter*, yet that every *presbyter* most certainly was not a *bishop*,) nevertheless, on the point of *episcopal elections*, they have either been totally silent like the learned Archbishop Usher\*, in his excellent little tract, "*De*

U u

" *epis-*

\* Archbishop Usher, however, in another useful work, not professedly on the subject of Episcopacy, has nevertheless, in occasional notes, produced several instances of *Bishops elected by the PEOPLE as well as by the clergy*. See *Vetèrum Epistolarum Hibernicarum Sylloge*, viz. the 25th, 33d, 34th, 40th, and 41st, epistles, with the Archbishop's remarks upon them, together with his remarks on the 39th epistle; all which remarks will be found at the end of the book, under the title of "*Epistolarum Recensio*." The examples relate to the *free elections, by the clergy and people*, of the Bishops of *Dublin* and *Waterford*, between the years of Christ 1074 and 1122, which Bishops, as well as the Bishops of *Limerick*, received, in those times, their *episcopal ordination*, or consecration, from the Archbishops  
of

“ *episcoporum et metropolitanorum origine,*”  
 and Dr. Cave, in his learned and laborious  
 “ *Dissertation*

of Canterbury, and *freely* acknowledged the jurisdiction of that see. The inhabitants of the said Irish cities were colonies of *Normans*, who invaded Ireland and took possession of those parts under the command of *Rollo* and his two brothers, (according to an account cited by Archbishop Usher, *ibid.* p. 163.) which was probably *before* his conquest and settlement in a part of France, about A. D. 912. Dublin, however, and the greatest part of Ireland was afterwards (*viz.* about A. D. 964.) conquered by our Anglo-Saxon King, Edgar, (as appears by his charter, of that year, “ *De Oswaldes laws,*” *ib.* p. 121.) a circumstance not much noticed by historians, as the Archbishop remarks on the said charter or diploma, p. 163. “ *in quo*” (says he) “ *quod omnes historiae*”  
 “ *tacent, MAXIMAM PARTEM HIBERNIÆ CUM SUA*”  
 “ *NOBILISSIMA CIVITATE DUBLINIA, ANGLORUM*”  
 “ *REGNO SUBJUGATAM A SE FUISSE confirmat.*”  
 But though our *Anglo-Saxon* government soon afterwards lost their dominion in *Ireland*, with respect to temporal matters, yet these *Norman* colonies in *Ireland* long afterwards *freely* acknowledged and endeavoured, of their own accord, to maintain an ecclesiastical jurisdiction of the archbishops of Canterbury over their *own elected* Bishops; by regularly applying to Archbishop Lanfrank, and some of his successors, archbishops of Canterbury, to consecrate their elected Bishops. And the *clergy* and *people* of *Dublin*, in one of these epistles, (*viz.* to Radulph, Archbishop of Canterbury, A. D. 1121.) say, “ *We have always willingly submitted ours*” (*i. e.*  
 ONE

“ *Dissertation concerning the government*  
 “ of the ANCIENT CHURCH by Bi-  
 U u 2 “ *shops,*

our Bishops) “ to the GOVERNMENT OF YOUR PREDE-  
 “ CESSORS, from which we remember that OURS received  
 “ ecclesiastical dignity\*.” But, whether the submission of  
 these Irish sees to the province of Canterbury commen-  
 ced only after the establishment of the Normans in England,  
 is not certain: though it is most probable that the cus-  
 tom might have been founded on a more ancient con-  
 nection of those cities with the province of Canterbury  
 under the Anglo-Saxon conquerors; especially as the  
 burgessees and clergy of Dublin, in their letter, dated A.  
 D. 1121, last cited, assert that *their voluntary submission*  
 to that see had “ *been preserved a long time,*” “ *multo*  
 “ *tempore;*” for they warn † the Archbishop of Canter-  
 bury, that “ *the Bishops of Ireland have great zeal (say*  
 “ *they, or wrath) against us, and chiefly the Bishop that*  
 “ *dwells at Armagh, because we are unwilling to obey*  
 “ *their ordination, but we are always desirous to be under*  
 “ *your government, and therefore we request your suffrages,*  
 “ *so far that you may advance GREGORY*” (whom they  
 gall, in the former part of the epistle “ NOSTRUM  
 “ ELECTUM

\* “ *Antecessorum suum vestrorum magisterio semper NOSTROS LIBEN-*  
 “ *TER SUBDIMUS, a quo recordamur nostros accepisse dignitatem eccle-*  
 “ *siasticam.*” p. 100.

† “ *Sciatis vos reverã, quod Episcopi Hiberniæ maximum solum*  
 “ *erga nos habent, et maximè ille Episcopus qui habitat Ardimaachæ;*  
 “ *quia nos nolumus obedire eorum ordinationi, sed semper sub vestro*  
 “ *dominio esse volumus. Incired vestra suffragia supplices petimus,*  
 “ *quatenus Gregorium ad sacrum ordinem Episcopatus promoveatis;*  
 “ *si ampliùs illum parochiam, quam MULTO TEMPORE vobis serva-*  
 “ *vimus, retinere volueritis. Vale.*”



“*bishops, Metropolitans, and Patriarchs,*”) or else have expressed a great degree of prejudice

“ELECTUM”) “to the sacred order of episcopacy, if you shall be willing, any longer, to retain that see, which, for a LONG TIME,” (“multo tempore,”) “we have preserved to you” Epist. 40. p. 100. The 25th epistle, An. 1074, is from “the clergy and people of the church of Dublin” to Lanfranck, Metropolitan of Canterbury; in the address of which, they tender their “debitam subjectionem\*.” They inform him that “the church of Dublin is widowed of its Pastor, and destitute of a Ruler, therefore we” (say the clergy and people) “HAVE ELECTED A PRESBYTER, by name, PATRICK, to us very sufficiently known, noble in birth and morals, &c. whom we request, as soon as may be, to be ordained our bishop,” &c.

The 33d epistle, A.C. 1095, p. 89. is from Anselm, Archbishop of Canterbury, to the Bishops of Ireland, informing them; that, on the death of his predecessor, Archbishop Lanfranc, the King, the Bishops, and the great men, of the kingdom had dragged him violently to

\* See p. 68. “Venerando sanctæ Cantuariensis ecclesiæ metropolitano Lanfranco, clerus et populus ecclesiæ Dublinensis debitam subjectionem.

“Vestrae Paternitati est cognitum; quod ecclesiâ Dublinensis (quæ Hiberniæ insulæ metropolis est) suo sit viduata pastore; ac destituta rectore. Propterea eligimus Presbyterum, nomine Patrickum, nobis sufficientissimè cognitum, natalibus et moribus nobilem, Apostolicâ & Ecclesiasticâ disciplinâ imbutum, fide Catholicum, in scripturarum sensibus cautum, in dogmatibus ecclesiasticis exercitatum. Quem nobis quantocius petimus ordinari episcopum: quatenus, auctore Deo, regulariter nobis præesse valeat et prodesse; et nos sub ejus regimie salubriter militare possimus. Quia integritas præfidentium salus est subditorum: et ubi est incolumitas obedientiæ, ibi sana est forma doctrinæ.”

prejudice against all ancient testimonies,  
which tend to justify any claim of popular

or

to the episcopal chair, *the clergy and people* calling out for the same purpose\*. This seems to have been an election by the parliament, like many other examples about that time, viz. by *the King, the Bishops, the Lords of the Kingdom, the clergy, and people*; and, therefore, though it affords evidence of the *popular right* to elect, yet it is not a proper example for imitation in episcopal elections, which should be made only by *the clergy and people of each particular diocese*, according to the ancient canons and practice of the primitive church.

The 34th epistle, A. C. 1099, p. 92, is from "*the clergy and people of the town of Waterford, with King Murcbertog and Bishop Donald*," to Archbishop Anselm, wherein they say †, "*We and our King Murcbertach, and Bishop Donald, and Dermeth, our Duke, brother of the*"

"King.

\* ——"Defuncto beatæ memoriæ prædecessore meo *Lafranco* Archiepiscopo, cum in Normanniâ *Becctis* monasterii abbas extissem, (unde et præfatus antecessor meus ad regendam ecclesiam, cui Deo auctore præideo, ante me processerat,) occulto Dei iusticio, pro utilitatibus ecclesiasticis in Angliam veni. Quòd venientem tam Rex quàm pontifices regnique optimates, ad cathedram pontificalem, non vocando, non rogando, (ut fieri assolet,) immo violenter rapiendo pertrahunt: clero et populo acclamantibus in id ipsum; ut nec unus cui quod gerebatur displiceret, visus fuerit interesse." (p. 90.)

† ——"Nos et Rex noster *Murcbertachus*, et Episcopus *Domnaldus*, et *Dermeth* Dux noster, frater Regis, ELEGIMUS NUNC PRESBYTERUM *Malbum, Walcbelini* Wintoniensis episcopi monachum, nobis sufficientissimè cognitum, &c. &c. Hunc nobis petimus a vestra paternitate ordinari pontificem: quatenus regulariter nobis præesse valeat et prodesse, et nos sub ejus regimine salubriter Domino militare possimus," &c.

or congregational right in the choice of Bishops; and zealously opposing thereto a multitude

“ King, have ELECTED THIS PRESBYTER, MALCHUS, the monk of Walsbein, Bishop of Winchester, to us very sufficiently known, &c. him we request to be ordained our Bishop by your paternity, &c.”

The 41st epistle (in p. 101.) is from Henry I. K. of England, to Radulph, Archbishop of Canterbury, as follows: “the King of IRELAND hath informed me by his brief, and the Burgesses of DUBLIN, that THEY HAVE ELECTED this GREGORY,” [who was probably the bearer of the King’s letter, as well as of the former (N<sup>o</sup>. 40.) from the burgesses and clergy of Dublin,] “and send him to thee to be consecrated, wherefore I command thee, that, satisfying their petition, thou mayest complete his consecration without delay.” At Windsor, witness, Ranulph, Chancellor.

Thus it appears that the conquest of Ireland by King Edgar did not affect the just liberties of the church of Ireland; for the Norman colonies therein still enjoyed the uninfluenced election of their own Bishops: and though they acknowledged the jurisdiction of the province of Canterbury in ecclesiastical matters, even when they were become independent, and separated from us, under a King of their own, yet that submission was perfectly voluntary and free, and was continued for no other reason

“ Henricus, Rex Angliæ, Radulpho Cantuariensi Archiepiscopo salutem.

“ Mandavit mihi Rex Hiberniæ per breve suum, et Burgenses Dub-  
 “ linc, quod elegerunt hunc Gregorium in episcopum, et eum tibi mit-  
 “ tant consecrandum. Unde tibi mando, ut, petitioni eorum satisfac-  
 “ tiens, ejus consecrationem sine dilatione expleas. Teste Ranulpho  
 “ Cancellario apud Windesor,” p. 101.

multitude of *precedents*, wherein the *imperial* or *royal* power has been exercised  
in

reason than because they had originally received *episcopal* ordination from the Archbishops of that see. Nevertheless they declared themselves at liberty to receive consecration from the Archbishop of Armagh, and other Irish Bishops, (who earnestly desired to confer it on them.) in case the prelates of Canterbury should be negligent in their superintendency. And the Bishops also of the *native Irish* and their flocks were equally free and independent in *ecclesiastical* matters, having preserved a due succession of the sacred order of episcopacy from the early times of their *first* conversion (*before* the time of the *first* Patrick) down to the barbarous times of our K. Henry II. who invaded their island, under the delusive sanction of a *papal* commission, to compel the submission of the *church* of Ireland to the jurisdiction and doctrines of the *church* of Rome, and to pay an annual tribute to the pope of one penny for every house; and all this on the delusive pretence of *instructing* the Irish, *reforming* their manners, &c. Henry obtained his first commission for these purposes from pope Adrian IV. A. D. 1155, which Archbishop Usher has inserted in his said collection of ancient epistles, p. 109. And he informs us, in p. 152. (from *Trivettus*,) that Henry treated with his parliament at Winchester concerning the *conquest* of Ireland, but, because it did not please his mother the empress, that expedition was postponed to another time. The empress, probably, was shocked with the *injustice* of the proposal, notwithstanding the *papish* dispensation for it.

Afterwards,

in the appointment of Bishops, and, like the indiscriminate Herecourt before quoted, not discerning that the latter are precedents only of usurpation, not of right & Those of the opposite party, the presbyterians, (who attribute the dignity and function

Afterwards, however, in the year 1172, Pope Alexander III. revived the former wicked and presumptuous grant of Adrian, for invading and usurping the temporal rights as well as spiritual jurisdiction of the clergy and people of Ireland, (whereby "the dominion of the Irish kingdom was INDULGED to" Henry,) and, in the plenitude of his unlimited and unlawful power, this "man of sin," & apostate, presumptuously ratified and confirmed the iniquity! The usurping Popes may therefore most justly be deemed the most cruel enemies and destroyers of the temporal as well as ecclesiastical RIGHTS of the people of Ireland; yet, so great was the darkness occasioned by the future papal jurisdiction therein, that the mist is not yet entirely dispelled, so that multitudes of well-meaning Irish people cannot yet perceive that the corrupted and usurping church of Rome ought to be ranked amongst the most inveterate and dangerous enemies of the church of Ireland.

— Concessionem ejusdem (i. e. Adriani Papae) ad papam Hiberniam regni dominio vobis indulto (sicut beato Patre sancto Innocentio Romano ecclesiae, sicut in ANGLIA, sic et in HIBERNIA, de supradictis domibus annua unius denarii pensione) ratam habemus et confirmamus, &c.  
p. 111.

tion of *Bishops* to their *Presbyters* \*; and also more particularly the Independents,

X x

who,

\* The learned author of "*An Enquiry into the Constitution, Discipline, Unity, and Worship, of the Primitive Church,*" &c. (a work commonly attributed to the late lord-chancellor King,) has laboured hard to level the *primitive Bishops* to the degree of mere *Rectors of parishes*, and to elevate the *Presbyters* to the rank of *Bishops*, though there are clear proofs of the superiority of *Bishops* (and of the ordinary residence, in each place, but of the *Bishop*, with *several Presbyters* and *Deacons* at the same time) included even in some of the citations which he has collected to favour a contrary doctrine. His opinion seems to have been built principally on a peculiar explanation of the word *ordination*. "That *ordination*," (says he,) "that I shall speak of, is this, the grant of a peculiar commission and power, which remains indelible in the person to whom it is committed, and can never be obliterated or rased out, except the person himself cause it by his heretic, apostacy, or most extremely gross and scandalous impiety." (Thus far there is no need to oppose his sense of *ordination*; but he adds,) "Now this sort of *ordination*" (says he) "was conferred only upon *Deacons* and *Presbyters*, or on *Deacons* and *Bishops*, *Presbyters* and *Bishops* being here to be considered as all one, as Ministers of the church universal," p. 115. This appears to be the key-stone, whereby the whole fabric of the doctrine throughout his work is suspended and held up, and consequently, the whole building must fall by the removal of it! Very happily, for the determination of the dispute, he has produced

who, together with them, contend for the congregational or popular right to ELECT, ARE

duced (within a few pages after the place from whence this quotation was taken) some clear and unquestionable examples of the ordination of some persons to the degree of *Presbyters*, who really were not *Bishops*, and never had *episcopal* dignity in the ordinary ecclesiastical sense of the word *episcopal*, so that they could not, consistently with truth, "be considered as all one" with *Bishops*, according to this learned writer's hypothesis.

He cites (in p. 133.) the express testimony of Eusebius for the ordination of ORIGEN to be a *Presbyter*, "that the Bishops of Cæsarea and Jerusalem ordained" (or laid hands upon) "him into the presbytery," i. e. to make him a *Presbyter*, "Καισαρειας τε και Ιεροσολυμων Επισκοποι χειρας εις πρεσβυτεριον αυτη ταθεικασι," Euseb. lib. 6. c. 8. p. 209. Here then is a clear proof of the ordination of a person to be a *Presbyter*, by the hands of *Bishops*, and yet no man, that has any regard to the testimony and truth of ecclesiastical history, will presume to say that Origen was a *Bishop*, though he was unquestionably ordained to be a *Presbyter*; and, consequently, it cannot be true, that the ordination of "*Presbyters* and *Bishops*" is "to be considered as all one."

By another quotation, in p. 135, from Eusebius, this learned writer proves also that "*Novatian* was ordained a *PRESBYTER* by imposition of hands," i. e. the hands of a *BISHOP*, as Eusebius declares: κατηξιωθη του πρεσβυτεριου κατα χαριν του ΕΠΙΣΚΟΠΟΥ του επιθετος αυτη χειρας εις πρεσβυτεριον κληρον. Cornel. apud Euseb. lib. 6. cap. 43. p. 245.

And

are apt to lay *too much stress* (perhaps) on this external circumstance of FREE ELEC-

X x 2

TION;

And that this is a clear example of *the ordination of a mere Presbyter*, manifestly distinct from *ordination to the episcopal dignity*, is demonstrated by the same chapter of Eusebius, which relates the wicked fraud of *this same Presbyter*, Novatian, at a time when he was already a *Presbyter*, to obtain a *farther ordination* for the *episcopal dignity*, by inveigling three simple country Bishops to *ordain him a Bishop* by the imposition of their hands. And therefore, though *all Bishops* are certainly *Presbyters*, yet these examples, cited by the learned writer, clearly demonstrate that *all Presbyters* are NOT *Bishops*, and, consequently, that their *ordination* is NOT “to be considered as all one.” The rite of ordination (i. e. *the laying on of hands by the Bishops, after solemn prayer of the whole congregation for the assistance of the Holy Spirit*) is, indeed, “all one,” as well in the ordaining of *Deacons*, as in the ordination of *Presbyters*, and in the consecration of *Bishops*, differing only in the *designation* to these respective offices of the Christian Ministry, as I have already remarked in p. 316 n; but then this single circumstance of *designation* is sufficiently effectual to occasion an *essential* difference in the three degrees of *holy orders*; for what are *orders* but *designations*, or declarations of the office conferred, or function to be discharged? insomuch that a person who hath been duly ordained by the *same solemn rite*, with a *designation* to the office of a *Deacon*, may not assume the office of a *Presbyter*, without a *repetition of that rite*, and an express *order, or designation*, to the office and duty of a *Presbyter*; and



TION; for they generally consider it an *essential* to the sacerdotal function; where-

as,

and a *Presbyter*, who has *twice* received holy orders by the same solemn rite, cannot lawfully assume the dignity and office of a *Bishop*, until he hath been *first* duly elected to be a *Bishop*; and, *secondly*, (which is the *most essential* circumstance, by which *episcopal* authority is really conferred,) until he have been once more *ordered*, or *ordained*, (notwithstanding his two former orders, as a *Deacon*, and as a *Presbyter*,) and that with a repetition of the *same solemn rite*, (the laying on of hands with previous prayer,) but differing in this, that there is always an express order, or designation, to the *episcopal* function, previous to the prayers and laying on of hands. The example of *Novatian*, cited above, shews that the *re-ordination* of *Presbyters*, in order to obtain the degree and function of a *Bishop*, was deemed *necessary*, even early in the third century. Other examples, which I have quoted in pages 340-342 n. concerning the *re-ordination* of *Presbyters* that had been *elected* to be *Bishops*, prove that the same opinion as well as *practice* was preserved in the middle centuries of Christianity; and the *present* universal practice of the *episcopal* church, in giving *priests* orders always previous to *episcopal* consecration, is too well known and established, to need the citation of particular examples for illustration.

The learned Chancellor (if he was the writer of the said book) hath also *supposed*, that the petition of a candidate for holy orders “ was to the whole Presbytery, “ because” (says he, p. 115.) “ a Bishop alone could “ not give those holy orders, as is most evident” (says he)

as, in fact, it is only *expedient* and *desirable*, but not absolutely necessary, being, indeed,

he) "from Cyprian, who assures us, that all clerical ordinations were performed by the common counsel of the whole Presbytery; and, therefore," (says he,) "when, upon a most urgent and necessary occasion, he had been forced to ordain one but a *Lector*, without the advice and consent of his Presbytery, which, one would be apt to think, was no great usurpation, he takes great pains to justify and excuse himself for so doing." But all this supposition falls, at once, to the ground, as soon as the authority, which he has cited for it, (Cyprian's 24th Epist.) is more carefully examined; for it really contains no such doctrine, and doth not at all relate to "clerical ordinations," which he has too hastily supposed; Cyprian had not given "holy orders" (the subject of the learned writer's argument) to the persons for whose appointment he thought it necessary to apologize in that epistle; for they were still "*sub clero*," as he expressly declares, *under the degree of clergy*; so that the apology could not be for having ordained any one in the ecclesiastical sense of that word; but only for "having MADE (or appointed) one man a *Lector*, or *Reader*, in the church, and for having MADE another man a *Subdiacon*." "FECISSE me autem sciatis LECTOREM Saturni, et HYPODIACONUM Optatum confessorum." These were mere local functions in the church, at the disposal, not only of the Presbyters and Deacons, but also of the laity, or whole congregation, who have a right to elect to such offices, in many places, even to this day; so that an apology was really necessary in this case,

indeed, the most prudent mode of *introduction* to the constituting rite of *consecration*,

case, for having acted *without their consent*; but no apology would have been due, had the case been a *mere ordination*, or *conferring of holy orders*. The example is entirely foreign to the question of *presbyters* having a right to *confer holy orders*; and, as a proof that it is so, be pleased to remark, that the apology is addressed *jointly to the Presbyters and Deacons*; and cannot, therefore, prove the right of the *former* to confer *holy orders*, without admitting, also, the *latter* to the same degree of authority, an idea which the learned writer never intended to promote.

*Cyprian* has been as much misunderstood by some former advocates for the *Presbyterian* pretensions to the *right of ordaining*; who “to prove that *ordination by Bishops, without the assistance of PRESBYTERS, was always forbidden and opposed, tell us*” (says Dr. Hammond) “of *Aurelius’s* being ordained by *Cyprian*, and his *colleagues*, ep. 33. and then assure us, from ep. 58. that, by his *colleagues*, he means his *Presbyters*, (where yet there is no other proof of it, but the using of these words in the *inscription of the epistle, Cyprianus cum collegis, et ego et collegæ, Cyprian with his colleagues, and I and my colleagues.*) This” (says Dr. Hammond) “is a great, but discernible, *fallacy*, put upon the reader, as will soon appear, 1. if we but observe that the 33d epistle, where he tells of *Aurelius*, was written by *Cyprian* to his *Presbyters*, and so THEY ARE the persons whom he advertiseth, what he and his *colleagues* had done, and so, sure, WERE

“ NOT

cration, but no part of the *rite* itself, which consists only of *solemn prayer*, with the *laying on of hands*; in which latter, the *laity* can have no pretence to interfere\*.

But

“ not those *colleagues* that did it *with* him. Or, secondly, if, for the understanding *Cyprian’s* notion  
“ of

\* We may safely acknowledge, without injury to our *election-rights*, that the Bishops of the primitive church who succeeded immediately after the apostles, were not generally *elected* by the *people*, but were appointed either by the apostles themselves, as I have before remarked, or by *apostolic men*, for which see the evidence of Tertullian, p. 243. “ Ceterum, si quæ audent  
“ interferere se ætati apostolicæ; ut ideo videantur ab  
“ apostolis traditæ, quia sub apostolis fuerunt, possumus dicere: edant ergo origines ecclesiarum suarum;  
“ *evolvant ordinem episcoporum suorum, ita per successiones*  
“ *ab initio decurrentem, ut primus ille EPISCOPUS aliquem*  
“ *ex APOSTOLIS, vel APOSTOLICIS VIRIS, qui tamen*  
“ *cum apostolis perseveraverit, habuerit auctorem et antecessorem. Hoc enim modo ecclesiæ apostolicæ census suos deserunt: sicut Smyrnæorum ecclesia Polycarpum ab Joanne*  
“ *conlocatum refert: sicut Romanorum, Clementem a Petro*  
“ *ordinatum itidem: perinde utique et ceteræ exhibent quos*  
“ *ab Apostolis in Episcopatum constitutos apostolici seminis*  
“ *traduces habeant. Confringant tale aliquid hæretici.*  
“ *Quid enim illis post blasphemiam illicitum est? sed*  
“ *etsi confrinxerint, nihil promovebunt. Ipsa enim doctrina eorum cum apostolica comparata, ex diversitate*  
“ et

But this *primitive rite* of the church, the *laying on of hands*, is publicly rejected by  
many

“ of *collegues*, ep. 58. we shall but look forward to the  
 “ next epistle, 59, for that will fully discover it, being  
 “ this, *Cyprianus et cæteri collegæ qui in concilio affuerunt*  
 “ *numero LXVI.* where *Cyprian's collegues* are evidently  
 “ the 66 Bishops that were in council with him. And  
 “ so *St. Austin*, in his 28th epistle to *St. Hierome*, men-  
 “ tioning this very epistle, saith, *Cyprianus cum Coepi-*  
 “ *copis suis, Cyprian with his fellow Bishops*; an irre-  
 “ fragable evidence that these his *collegues* were *Bishops*.  
 “ The like” (says he) “ might be also observed of the  
 “ testimony out of *Firmilian*, which they there subjoin;  
 “ of the *Seniores* and *Præpositi* that have power of ordain-  
 “ ing, by whom, say they, the *presbyters*, as well as  
 “ the *Bishops*, are understood; but, again, it is clear, by  
 “ the exprefs words of the epistle, that by them are  
 “ meant the *Bishops* in their annual council; *necessario*  
 “ *apud*

“ et contrarietate sua pronunciabit, neque apostoli ali-  
 “ cujus auctoris esse, neque apostolici: quia sicut apos-  
 “ toli non diversa inter se docuissent, ita et apostolici  
 “ non contraria apostolis edidissent. Nisi illi qui ab  
 “ apostolis didicerunt, aliter prædicaverunt. Ad hanc  
 “ itaque formam probabatur ab illis ecclesiis, quæ  
 “ licet nullam ex apostolis, vel apostolicis, auctorem  
 “ suam proferant, ut multo posteriores, quæ denique  
 “ quotidie instituantur: tamen in eadem fide conspi-  
 “ rantes, non minus apostolicæ deputantur, pro con-  
 “ sanguinitate doctrinæ,” &c. p. 243. Parisædit. 1641.

many of the Independent and Socinian ministers. " *The ceremony of THE IM-  
 " POSITION OF HANDS*" (says one of them, for instance, in reporting the character of an eminent Socinian Preacher) " *be also refused to submit to, because be-  
 " considered it as void of any just meaning,  
 " where no extraordinary gifts are, or can  
 " be, imparted.*" This opinion of " *the  
 " imposition of hands,*" must have been too hastily taken up, because it is certainly erroneous. The fact is, that this ceremony, like all other *outward rites*, that were instituted by Christ, or his Apostles, may, or may not, be efficacious, according to the *inward disposition*, or sincerity, of the person to whom the *outward rite* is administered. Neither

" *apud nos fit ut, per SINGULOS ANNOS, SENIORES et  
 " PRÆPOSITI in unum conveniamus,*" &c.

I should not have made so long a quotation from Dr. Hammond, had not the learned *Chancellor* (or author of the tract just before cited) once more held forth these very testimonies to justify *ordination by Presbyters*, though they had long before been so amply confuted by Dr. Hammond.

Neither the administration of *baptism*,  
nor the participation of the *Lord's Supper*,  
can

“ It is a sad mistake” (says the rev. Mr. Tho. Salmon, in his *Historical Collections relating to the Originals, &c. of the Inhabitants of Great Britain*, p. 445-449.) “ of those who have a prejudice against episcopacy, that it is an invention of the *Papish* times, and that our *Reformers* so modelled the constitutions of our church, as they might be most agreeable to the humour of the *Romanists*. But, certainly, the history of Britain may convince any man of the contrary. The *Papish* times did not begin at the council of *Arlas*, yet there we had our Bishops: The fathers of the council of *Nice* had spent their days under the severest persecutions of the heathen, and were just entered upon the morning of the christian empire, and shall we think that popery was then prevalent? Our church is now settled as it was at that time: Not only Bishops all over *Britain*, so far as it was christian, but very near the same number of Bishops. The three chief bishoprics were settled as three most distant and proper places to have jurisdiction over the rest, *London*, *York*, and *Canterbury*: There were in all 28 cities, and accordingly 28 bishoprics, as the number is given us both by *Gildas* and *Bede*; and, if we have now two less, yet so much of Britain as lies between *Berwick* and *Edinburgh*, now belonging to *Scotland*, may well be allowed for the making of two. At the council of *Nice*, the jurisdiction of their metropolitans was settled, and the union of all the Bishops of the Province provided for: Such was the order and harmony  
“ of

can impart any good effect on those who receive them *unworthily*; without sincerity,

Y y 2

rity,

“ of the whole clergy, that, though the diocese was so  
 “ large that it could not be particularly known and  
 “ taught by the superior officers of the church, yet every  
 “ one acting in his place, and being accountable to  
 “ those above him, there was no defect either in the  
 “ doctrine or discipline of these primitive times.”

“ Certainly there is demonstration for episcopacy,  
 “ in that these were not only Bishops before popery, but  
 “ when the popish missionaries set up in the world,  
 “ the old Bishops were the very men who made the opposi-  
 “ tion against them. Nothing can be more undoubted  
 “ in history, than that the British Bishops met Austin  
 “ and his companions at the famous oak upon the banks  
 “ of Stourmy, and there utterly broke with them, pe-  
 “ rennially refusing subjection to the pope of Rome,  
 “ It is also as certain that Columba, bishop of Birmi-  
 “ singham, and his northern clergy, who had their origi-  
 “ nal Christianity from Britain, maintained the grand  
 “ dispute at Stremsbalk against Agellars, Wulfid, and  
 “ the rest of the Romanists; that they retired and for-  
 “ sook their preferments rather than they would submit  
 “ to the impositions of Rome. The laying aside their  
 “ ancient observances, and receiving the papal censures,  
 “ were looked upon by them both as innovations and  
 “ badges of servitude to a foreign power, and therefore  
 “ rejected by them, as they are by us at this day. We  
 “ must maintain, like them, the customs of the church,  
 “ which have been from the beginning; there always  
 “ was a commemoration of Christ and his apostles at certain  
 “ times,



... rity, without regard to the *internal* and *spiritual*\* signification; but merely to please

... times, which we also observe without any lie or the  
 ... saints of the *Roman* make: There always was a sub-  
 ... mission to the authority of the church in matters of  
 ... decency and order, which is all that we require,  
 ... without the least subjection to the church of *Rome*:  
 ... We yield no deference, we utterly renounce her au-  
 ... thority over us. And, to suppose that our reformers  
 ... either wanted judgement to distinguish between the  
 ... ancient customs of the church and the later inventions  
 ... of popery, or that they wanted integrity to the true  
 ... christian religion, whose works and martyrdom bear  
 ... witness in their favour, is such a pretence as cannot  
 ... support itself under a sincere consideration.

... *We should be fond of episcopacy, if we did but review*  
 ... *that opposition which the pope always made against it;*  
 ... *if we did but observe how he could never compass his ends*  
 ... *but by the destruction of its power.* He raised up the se-  
 ... veral orders of monks, that those who were employed  
 ... in religion might depend upon him, and not upon their  
 ... *Bishops*; he exempted the monasteries from the jurif-  
 ... diction of the diocessans, that all those rich planta-  
 ... tions might heartily espouse the tyranny and superstiti-  
 ... on of *Rome*. He did all he could to transform the  
 ... bishops into monks, and prevailed so far, that every  
 ... arch-

\* "GOD is a SPIRIT, and they that worship him, must  
 ... worship him IN SPIRIT and in truth." John iv. 24.

There is nothing in this text which can fairly be con-  
 ... strued against the use of external ceremonies, either of  
 ... the

please men by an *outward* conformity to the ceremonies for some worldly advantage

“ archbishop of *Canterbury* thought it necessary to put  
 “ on that habit; which made his *episcopacy* *subservient*  
 “ to another sort of government. He found that a diocesan  
 “ Bishop, with his clergy in a cathedral church, was such  
 “ a bulwark to the national establishment, that he could  
 “ not dilate his empire; he therefore, by his interest  
 “ with King *Egbert*, got the great *Oswald* law to pass,  
 “ by which the *Presbyters* were cast out, and monks put in-  
 “ to their places. How can episcopacy be a popish in-  
 “ vention,

the laying on of hands, or of the sacramental institutions of Christ, though it is certainly applicable to enforce the necessity of a sincere and spiritual devotion in the use of them, as also in our daily prayers: but those men, who not only despise these institutions of Christ and his primitive church, but even neglect, for the most part, in their public meetings, Christ's positive injunctions TO PRAY (“ Ask and it shall be given to you, &c. Mat. vii. 7.) and neglect more especially TO PRAY for the HOLY SPIRIT, (which is so clearly promised “ to them that ask,” Luke xi. 9-13.) through a groundless persuasion that they do obtain that heavenly gift by other means; those men, I fear, are under a very dangerous delusion of a contrary spirit; for it would be unreasonable to admit their pretensions to spiritual worship in the sense of that text of John, (viz. “ in spirit and in truth,”) whilst they prefer their own novel way of worship to that true worship which was so clearly commanded by Christ, and practised by the primitive Christians, and the universal church.

tage, or favour, as many do by way of  
*test*: to such men “ *no extraordinary gifts*  
*are,*

“ *vention, when it has been all along the great business*  
 “ *of the pope to overthrow it?*

“ We must ever own great honour and reverence due  
 “ to *Columba*, who planted his monastery or university  
 “ in the isle of *Hye*, upon the coast of *Scotland*, which  
 “ was a seminary for all the christian ministers of the  
 “ north; but that the custom or education of this place  
 “ should be against episcopacy is impossible, since they  
 “ not only had a Bishop in that little island, but *Adam-*  
 “ *naxus*, one of the successors of *Columba*, gives us  
 “ an account of the great deference they always paid  
 “ to that order. Bishop *Aidan* came from thence, con-  
 “ verted the *Northumbrians*, had his episcopal see in  
 “ the island of *Lindisfarn*, which was afterwards re-  
 “ moved to *Durham*. After he was dead, Bishop *Finan*  
 “ was ordained by the *Scots*, and succeeded him; by  
 “ *Finan* was *Diuna*, the first Bishop of *Litchfield*, or-  
 “ dained, whose successors were also from *Scotland*,  
 “ and of the episcopal order. We meet also *Colman*  
 “ from *Scotland*, that Bishop of the *Northumbrians*,  
 “ who was ejected for the protestant cause. If *Columba*  
 “ himself had such an affection of the monastic life, that  
 “ he would not stir from *Hye*, and was of so great au-  
 “ thority that it was thought fit the Bishops of the north  
 “ should be accountable to him and his successors, to  
 “ whom so much was committed of the royal power,  
 “ this can be no argument against episcopacy itself;  
 “ since it is declared, at the same time, that such a  
 “ submission of Bishops to an abbot was a perverting  
 “ that

are, or can be, imparted" by these outward rites, which, on the contrary, rather increase their condemnation. For though very worthy ministers, who officiate therein, or administer these outward rites, may be deceived by the outward deportment of the persons to be baptized, or communicating, yet God's *Holy Spirit* is not to be mocked, as we learn by the sad example of Ananias and Saphira, whose dissimulation was punished by an immediate stroke from God, to impress the infant church with a due sense of the Almighty Power, and the necessity of *sincerity* in all things pertaining to God's Service. Such extraordinary outward manifestations of God's Spirit are not now to be

“ that order which was established in the church, Those  
 “ who read only the account of *Scotland* in the last  
 “ century, may, perhaps, have an opinion that there  
 “ was an ancient of Presbyterian government there;  
 “ but all authentic histories testify that they had the  
 “ same constitution of ecclesiastical orders, which were  
 “ in the rest of *Britain*, and all other christian nations.”

be expected; it is sufficient, that they continued until authentic historical accounts of our holy religion were dispersed, in writing, throughout the greatest part of the known world, and the canon of the sacred Scriptures completed, in which ample accounts of them are related; so that we may say of the New Testament, as our Lord said of the Old Testament, adding, *to the necessity of believing Moses and the Prophets, the necessary belief, also, of the New Testament, that the men who believe not these additional testimonies, of Christ's Disciples and witnesses, would not believe, even if one should rise from the dead!* Thus it appears, that the extraordinary *outward* manifestations of God's Spirit, in working miracles, are no longer *necessary* for the edification of the church; but we must not, therefore, say that "*no extraordinary gifts are, or can be, imparted!*" For miracles are not the only test of the real inspiration of God's  
*Holy*

*Holy Spirit*, but *love*, *good works*, and *holding fast the faith*, which was once delivered to the *Saints*. These are the *fruits* by which we are to judge of the tree; and, without these, even miracles are to be suspected of delusion, and are to be esteemed rather as the *lying wonders of Satan* than as the works of God! The power of *working miracles*, therefore, is not such an "*extraordinary gift*," as we have any right to look for, or to expect under the present dispensation of the *Christian religion*; and yet "*the gift of God's Spirit*" (which every true Christian has a *right* to expect, according to the unquestionable promises of Christ) is certainly "*an extraordinary gift*," and is as certainly "*imparted*" to all that *duly ask it* in the meritorious name of our Redeemer; if we may confide in the truth of the holy Scriptures! It is always "*an extraordinary gift*," (though "*im-*  
Z z
"*parted*"

“*parted*” according to *the ordinary* dispensation of our religion,) because it supports and endows pious and worthy men, on many occasions, far beyond their *ordinary*, or natural, abilities and strength. It is, I say, a real addition to the *ordinary* nature of man, and therefore always “an “*extraordinary gift* ;” being nothing less than a real participation “*of the DIVINE* “*NATURE,*” of which we may, if we will, be *partakers* (Θεας κοινωνοι φυσεως) through the “*exceeding great and precious* “*promises*” of that divine person “*that bath called us to glory and virtue.*” See 2 Pet. i. 3, 4.

If men are thus assured that this “*extraordinary gift*” may be obtained by *asking*, according to Christ’s directions, they surely cannot doubt of its being “*im-* “*parted*” when they *ask it* in a more particular manner on great and solemn occasions, as at the *baptism* of adults, or  
the

the *confirmation* of persons that have been baptized in their infancy; and at the sacramental *commemoration of Christ's death*, according to our Lord's own institution: these *outward rites* cannot impart *the extraordinary gift*; but the goodness and truth of God are absolutely pledged (if I may use such an expression) to fulfil the "*exceeding great and precious promises*" in favour of *prayer* for that *extraordinary gift*: and such *prayer* (having this the object) doth always make a part of those *solemn rites*; whereby they are most certainly rendered efficacious, if *sincerity* be not wanting in those persons to whom they are administered.

And it is exactly the same thing with respect to "*the imposition of bands*," (either in the consecration of Bishops, or in the ordination of Priests and of Deacons,) because that *ancient rite* of Christ's church is always performed with *solemn prayer*, in



Christ's name, for the *Holy Spirit* to guide and assist the persons consecrated or ordained; and the prayers of the congregation are also desired on their behalf; and therefore, if the persons *elect*ed to be consecrated for the office and dignity of Bishops, and the candidates for Priests, or Deacons orders, are really *sincere* themselves in their *prayers* and undertakings, there is no doubt but "the laying on of hands," thus accompanied with suitable prayer and devotion, is truly efficacious, and doth "impart the extraordinary gift" abovementioned. For the action of "laying on hands" hath nothing in it indecent, immoral, or contrary to God's laws, such as might be supposed to hinder the good effect of Christ's absolute promises to them that ask; but, on the contrary, is authenticated and sanctified by *apostolic usage*, declared in canonical Scripture,

Scripture, as well as by the constant subsequent practice of all the primitive churches of Christ; and ought not, therefore, to be laid aside on the groundless pretence that “*no extraordinary gifts are, or can be, imparted.*”

GRANVILLE SHARP.

Old Jewry, O<sup>o</sup>. 1784,



A very



A very worthy member of parliament, having lately read as much of this tract as was then printed, was pleased to propose the following queries; in answer to which the following letter was sent to him by the author, viz.

- “ *How could we divide this and other  
“ great towns into tithings?* ”
- “ *Would not streets be a better division  
“ in cities? Parishes and streets, instead  
“ of tithings and hundreds?* ”

### A N S W E R.

Dear SIR,

**T**HE ancient mode of dividing great cities was by *wards*; each of which was governed by an *alderman*, the *ealdorman* of the Anglo-Saxons, an officer of great authority in the *common law*; being a JUSTICIARY, and having all the powers of our modern *justices of the peace*; and, what is more, was always elected by the  
house-

*house-keepers* or *deciners* of the *ward* over which he presides. This ancient mode of division by no means interferes with the lesser divisions of *sittings* and *hundreds*; so far from it, that the government of the *wards* is not complete without them. The Lord Mayor's precept, to the aldermen, orders them (to this day) to hold courts of *frankpledge*\*; which were not without the regular divisions of *sittings* to give them effect. The *wards* are *local* divisions of various magnitude, and have been formed, (as you suggest,) some by *streets*, some by the intersection of *brooks*, now covered over; but those various dimensions

\* See Bohun's *Privilegia Londini*, p. 386. under the head of *Wardmote Courts* and the Lord Mayor's annual Precept to hold them; which latter, amongst other things, contains the following article.—No. 11. “And, for that, of late, there is more resort to the city of persons evil affected in religion, and otherwise, than in former times hath been; you shall diligently inquire if any man be received to dwell or abide within your Ward, that is not put under FRANKPLEDGE, as he ought to be by the custom of the city.” &c.

mentions of space required a regular numerical division of the *housekeepers*, in order to ascertain the due proportion of the representatives in the *common-council* of the city.

The average-rate of *common-councilmen* to the *housekeepers*, or *deciners*, is, at present, about one to 90. And as the city was, in antient times, more populous, and the houses smaller for each family, when men were restrained by law from building in the environs of the city, it is probable that the true proportion of *housekeepers*, to elect *one common-councilman*, should be 100; so that the common council has formerly been an assembly of *hundreders* or *high constables*. As the gates of the city have been removed so as to leave this most important place entirely exposed to the fatal consequences of any sudden riot, the attacks of any

A a a

hardened

hardened banditti; and (especially in cases of any alarms by fire,) to the most dangerous confluence of multitudes of unknown people, many of whom plunder the distressed, and others hinder the necessary means of assistance, it is highly expedient that some means of defence should be devised. I have been told, that, in the great cities of Japan, the streets are barricadoed and shut up with *palisade* gates every night, and that the people are actually divided into *tithings* and *hundreds*. I have much to say on this subject; and, if you are not going out of town immediately, I will do myself the honour to wait on you and communicate my thoughts.

I remain, with great esteem,

Dear SIR,

Your most humble Servant,

GRANVILLE SHARP.

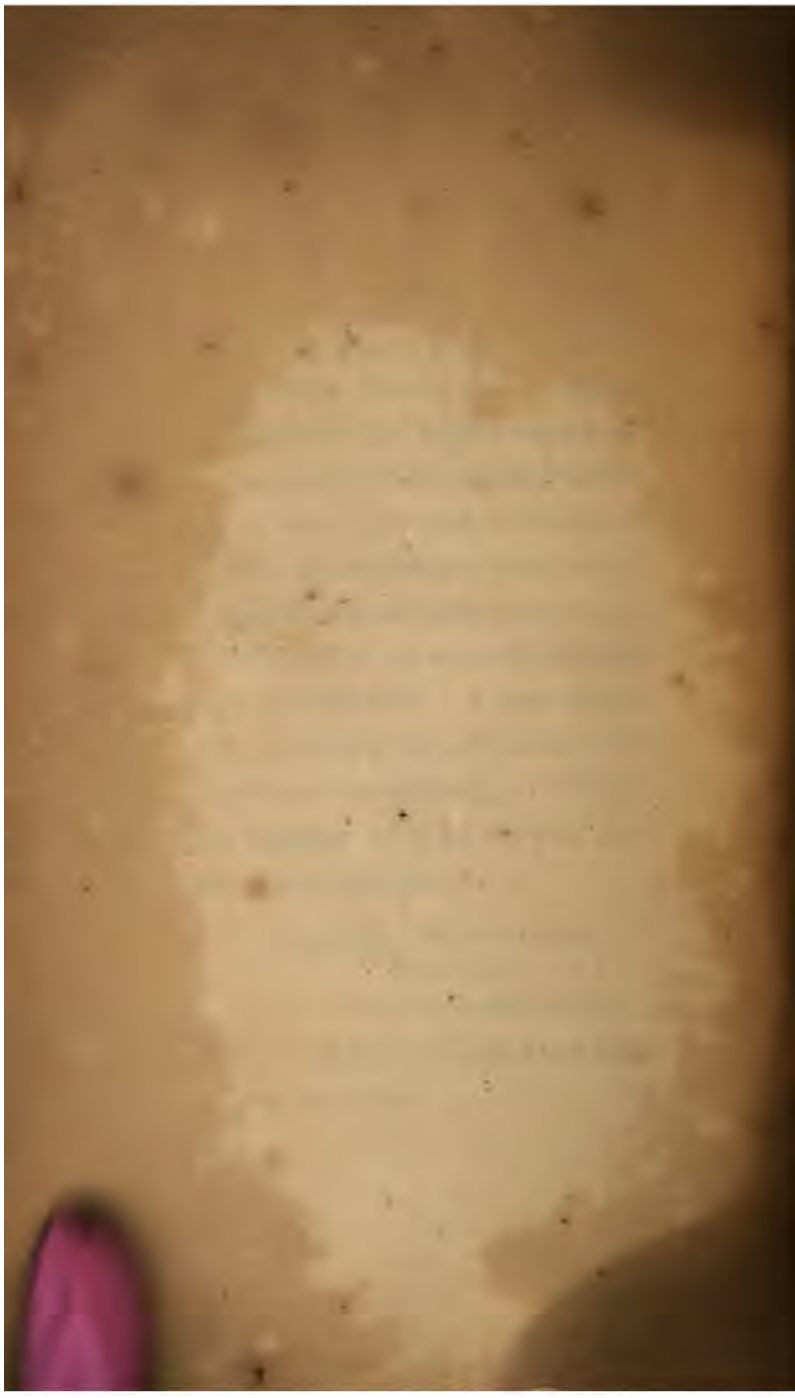
Old Jewry, Aug. 21, 1784.

• • • •, Esq.

7





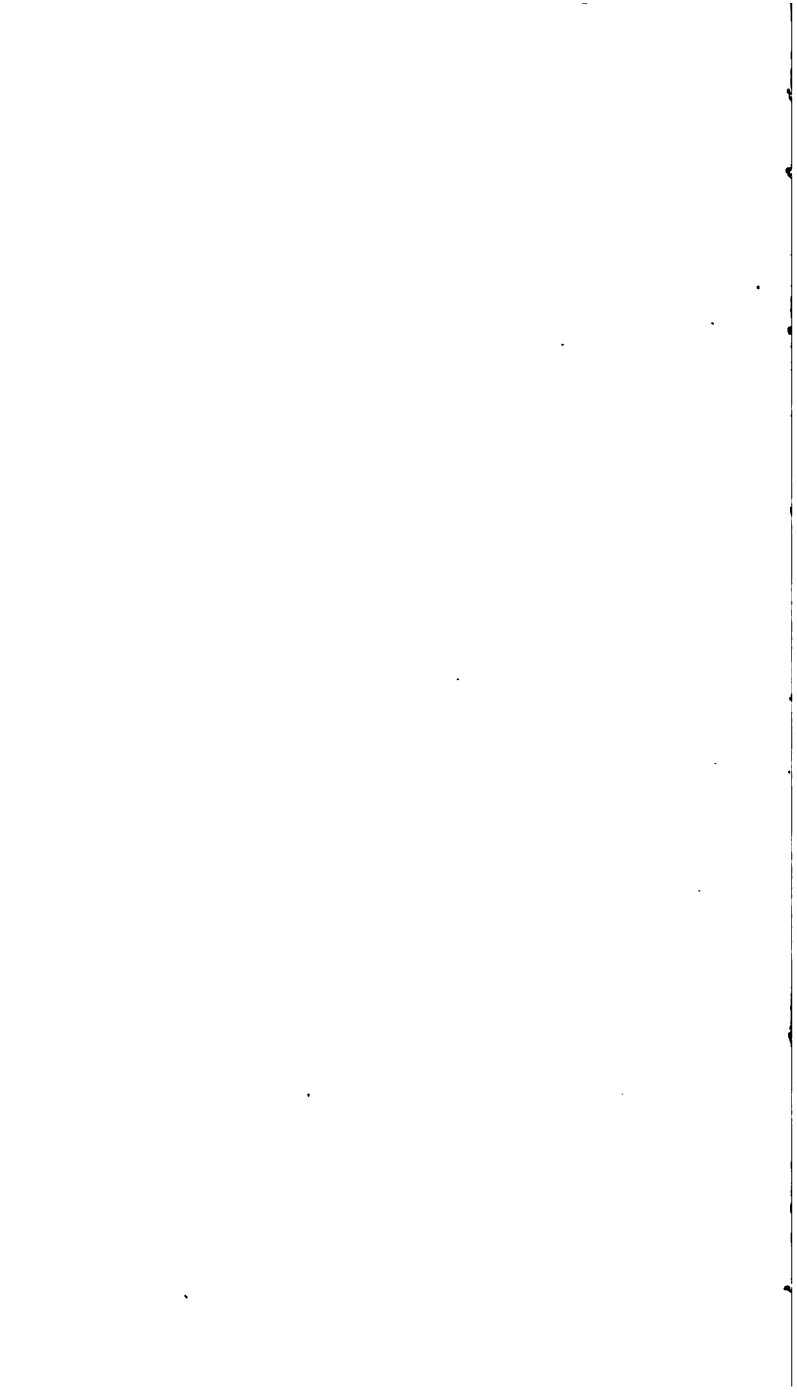




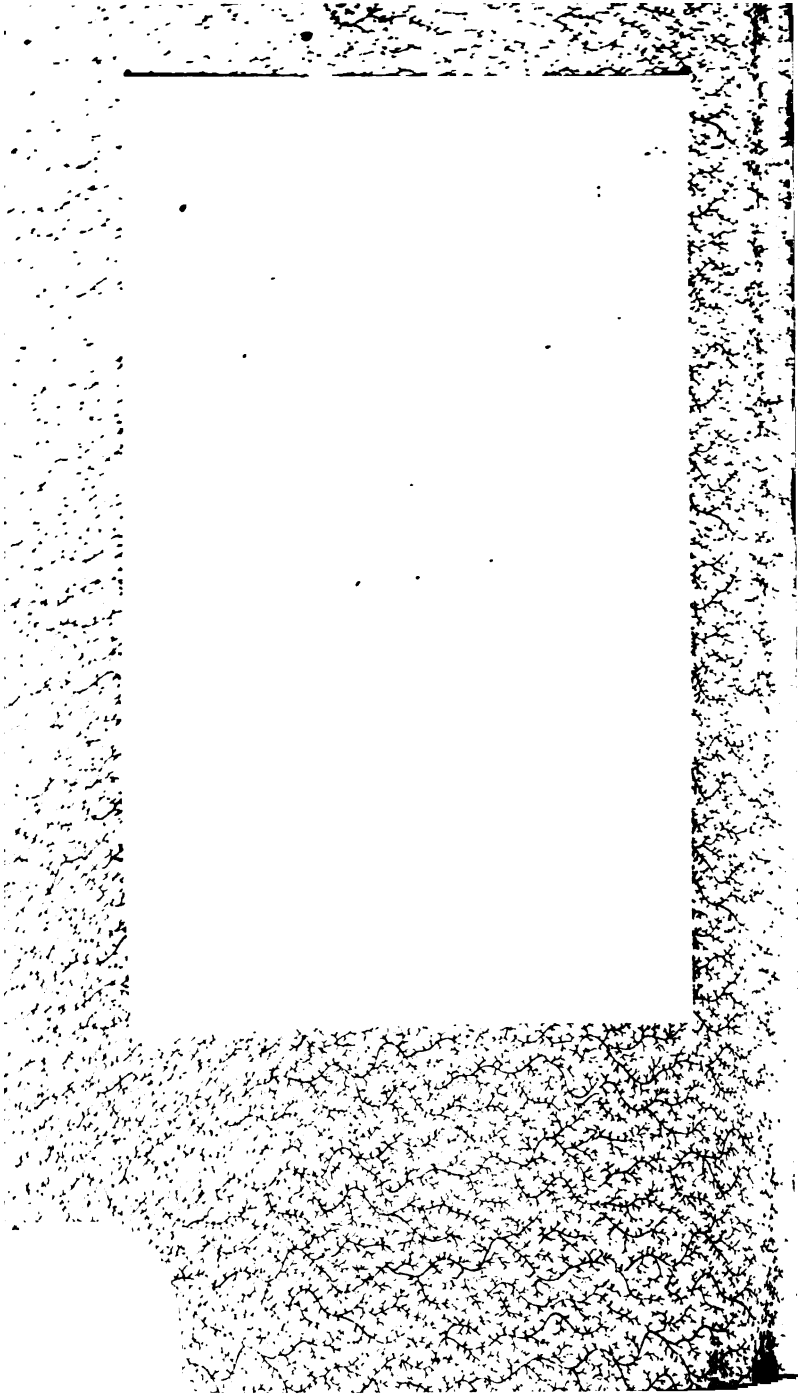
7

93.









B'D DEC 3 - 1914





